

IFAR[®] Journal

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COVER: GUSTAV KLIMT (Austrian, 1862-1918). *Judith with the Head of Holofernes*, 1901. Oil on canvas. Österreichische Galerie Belvedere, Vienna. Ph: Erich Lessing/Art Resource, NY. See article starting on page 47.

WAS SOTHEBY'S NEGLIGENT IN MISSING A "CARAVAGGIO"?

BRITISH COURT SAYS "NO"

A painting (FIG. 1) that some scholars believe may be by Caravaggio sparked a recent U.K. lawsuit against Sotheby's, when a disgruntled consignor sued the auction house for selling the work as a copy.¹ The



FIGURE 1. CARAVAGGIO (?), *Cardsharps*. Oil on canvas, 42 x 52 in. (106.68 x 132.08 cm.). Private collection, on loan to the Museum of the Order of St. John, London.



FIGURE 2. CARAVAGGIO. *Cardsharps*, c. 1594. Oil on canvas, 37 x 51 ¾ in. (94.2 x 131.2 cm.). Kimbell Art Museum, Fort Worth.

painting, a near-identical version of Caravaggio's renowned *Cardsharps* (FIG. 2) at the Kimbell Art Museum in Texas, was sold at Sotheby's in 2006 as by a "Follower of Caravaggio." When it was later authenticated by the eminent (and since deceased) Caravaggio specialist, Sir Denis Mahon, the consignor sued Sotheby's for negligence and breach of contract. For its part, Sotheby's stood by the opinion of its specialists, and brought forth other prominent experts who disputed the painting's attribution to the Baroque master, whose full name is Michelangelo Merisi da Caravaggio. Significantly, and perhaps with this lack of scholarly consensus in mind, the consignor did *not* sue to have his painting declared authentic. Rather, he alleged that Sotheby's had negligently failed to recognize his painting's *potential* as an authentic Caravaggio.

In its analysis, the High Court of Justice had to define the standard of care owed by an auction house to a consignor in assessing a work's authenticity and value. The court considered three types of evidence: art historical and connoisseurship; technical; and auctioneering practice and

fine art valuation. Ultimately, it concluded that Sotheby's was *not* negligent when it declared the painting a copy, and that it had fulfilled its duty of care.

"... the consignor did *not* sue to have his painting declared authentic.

Rather, he alleged that Sotheby's had negligently failed to recognize his painting's *potential* as an authentic Caravaggio."

THE THWAYTES
CARDSHARPS

The consignor, Lancelot William Thwaytes, inherited the painting in 1965 from his cousin, Captain William Glossop Thwaytes, a surgeon in the Royal Navy, who had purchased it for £140 at a 1962 Sotheby's auction where it was listed as "Caravaggio (After)."² In 1990, Lancelot Thwaytes sought an appraisal from Christie's, which estimated its value as £3,000-4,000. In 2002, Sotheby's placed an insurance value of £9,000 on the painting. Despite these low estimates,

¹ Mr. Lancelot William Thwaytes v. Sotheby's, Inc., [2015] EWHC 36 (Ch).

² Old Masters Paintings, Sotheby's London, February 1962.

and the fact that Thwaytes had inherited two other versions of the *Cardsharps* from his cousin, and that his father owned yet a third copy of the painting, Thwaytes suspected that *this* version might be the real thing.

Years earlier, another painting by Caravaggio had been discovered in Captain Thwaytes' collection. That painting, the *Musicians*, which had been purchased by Thwaytes in 1947, also as by a Follower of Caravaggio, was authenticated in 1952 by the same Denis Mahon, who identified it as Caravaggio's lost early painting *Musica* in an article in the *Burlington Magazine*.³ That same year, Captain Thwaytes sold the painting to The Metropolitan Museum of Art.

With this history evidently in mind, when Lancelot Thwaytes considered selling the *Cardsharps* in 2006, he sought Sotheby's opinion as to whether it, too, might be an authentic Caravaggio. Several Sotheby's specialists examined it and concluded that it was a seventeenth-century copy of the Kimbell painting by an anonymous "Follower of Caravaggio." Thwaytes, remaining hopeful, requested that x-ray and infrared analysis be performed on the painting. Sotheby's took

x-ray (but not infrared) images, but the specialists who reviewed them felt that the x-rays did not reveal any pentimenti or other evidence to suggest that the painting was by Caravaggio. Sotheby's specialists placed the *Cardsharps* in its Old Master Paintings sale at Olympia, its (now closed) second-tier salesroom, with a pre-sale estimate of £20,000-30,000.

Undoubtedly disappointed, Thwaytes nonetheless went forward with the consignment. The auction catalogue, in addition to describing it as by a "Follower of Caravaggio," noted that the painting came from a collection that formerly included an authentic Caravaggio.⁴ When the painting attracted significant attention in the sales room, additional Sotheby's specialists from the New Bond Street location were asked to view it, but they too were convinced that it was a period copy by a different artist.

On December 5, 2006, the *Cardsharps* sold for £42,000 (\$82,929) (plus buyer's commission) to Ms. Orietta Benocci Adam, a close friend of Sir Denis Mahon, whose opinion had not only authenticated Captain Thwaytes' *Musicians* as a Caravaggio, but who had also helped identify the

original Caravaggio *Cardsharps* now in the Kimbell Museum. In November 2007, less than one year after the Olympia sale, Mahon announced at his 97th birthday party that the Thwaytes *Cardsharps* was *not* a period copy, but, in fact, a replica painted by Caravaggio himself. Although not all Italian Baroque scholars accepted Mahon's attribution, at least two prominent Italian specialists, Mina Gregori and the late Maurizio Marini, did. In 2008 the painting was featured in an exhibition in Sicily as a newly discovered Caravaggio; the accompanying catalogue contained an essay in which Gregori defended its authenticity.⁵

Upon learning that that the painting he had consigned as a copy had been accepted as an authentic Caravaggio, the "horrified" Thwaytes contacted Sotheby's. The auction house denied any wrongdoing and held to its opinion that the painting was a copy by a different artist. In 2012, Thwaytes filed suit against Sotheby's alleging that the auction house was remiss in relying exclusively on the connoisseurship of its own in-house specialists rather than on outside specialists and forensics in forming its opinion.

³ Denis Mahon, "Addenda to Caravaggio," *Burlington Magazine*, vol. 94 (January 1952), pp. 3-23.

⁴ Sotheby's Old Masters Paintings, Olympia, London, Dec. 5, 2006, lot 424.

⁵ *Caravaggio: l'immagine del Divino* held at the Museo Regionale Conte Agostino Pepoli, in Trapani, Sicily and the Musei San Domenico in Forlì (Dec. 2007- March 2008).

Moreover, he alleged that Sotheby's was negligent when it failed to recognize the painting's high quality of execution and "Caravaggio potential."

CARAVAGGIO AND THE QUESTION OF COPIES

The Kimbell's *Cardsharps*, one of Caravaggio's earliest and most popular genre paintings, was executed around 1594 in Rome. The humorous scene shows two card cheats and their richly dressed dupe, who is so engrossed in his cards that he is unaware that the sharp behind him is signaling his accomplice, who, in turn, is pulling a card from his pocket. According to Caravaggio's seventeenth-century biographers, the *Cardsharps* was purchased by the powerful Cardinal Francesco Maria del Monte, who eventually became the artist's first important patron in Rome. Del Monte's *Cardsharps* was identified by Keith Christiansen and Denis Mahon in 1988 as the version now in the Kimbell Museum, which also bears a stamp on the verso with the Cardinal's coat of arms.

"The question of whether Caravaggio himself ever made exact copies of his early paintings is the subject of scholarly debate."

Lighthearted scenes of trickery were extremely popular in

the seventeenth century. Their winking morality may have held additional appeal for Cardinal del Monte, who also owned one of two known originals of Caravaggio's *Fortune Teller* (FIG. 3) depicting a gypsy stealing a ring from a young man while reading his palm. Caravaggio's paintings of deception were also popular with artists, and inspired generations of *Caravaggisti*, including Georges de la Tour, Bartolomeo Manfredi, and Valentin de Boulogne, to populate their paintings with fortune tellers, procuresses, and cheats. Scores of lesser artists simply made copies of Caravaggio's originals, and in 1976 Alfred Moir listed over 30 copies of varying quality of Caravaggio's *Cardsharps*.⁶

The question of whether Caravaggio himself ever made exact copies of his early paintings is the subject of scholarly debate. While Caravaggio is known to have made variants—or non-identical versions—of popular themes, including the *Fortune Teller* (Louvre and Capitoline Museum, Rome) and the *Lute Player* (Metropolitan Museum and Hermitage Museum), he is not known to have made exact replicas. Most scholars, citing Caravaggio's lack of a studio and students, adhere to the belief that Caravaggio



FIGURE 3. CARAVAGGIO. *Fortune-Teller*, c. 1594. Oil on canvas, 45 ¼ x 59 in. (115 x 150 cm.). Pinacoteca Capitolina, Rome; inv. 227.

did *not* make replicas, but Gregori argued in her 2008 essay that the sheer number of known copies of the *Cardsharps* invited the possibility that one could actually be an autograph work by Caravaggio himself.⁷

Although the lawsuit did not seek a decision on whether or not the painting was authentic, the court was faced with the question of how to define "Caravaggio potential," even if there *were* such an art historical classification, and how to ascertain the duty of care necessary to recognize that potential. In determining the thorny question of whether Sotheby's experts should have detected indications of superior quality in the painting, the court

⁷ Mina Gregori, "A Further Original of Caravaggio's *Cardsharps*," *Caravaggio: l'immagine del Divino, un tributo a Sir Denis Mahon*, Ed. Denis Mahon and Maurizio Marini (Rome: Rome Artificio; Valetta: Heritage Malta, 2007): pp. 50-83.

⁶ Alfred Moir, *Caravaggio and His Copyists* (New York: New York University Press, 1976).

heard from other Caravaggio experts, mainly in the U.S., including scholar Richard Spear, conservator Diane Modestini, and Keith Christiansen, Chief Curator of European Paintings at the Metropolitan Museum, all of whom sided with Sotheby's in rejecting the attribution.

In her essay in the 2008 Sicilian exhibition catalogue, Gregori argued that the Thwaytes *Cardsharps* (FIG. 1) displayed stylistic features that attested to its high quality of execution, consistent with Caravaggio. Many of the passages singled out by Gregori as proof of the painting's high quality, however, were the same elements that other specialists held up as evidence of inferior execution. For example, Gregori found the tufts of feathers and delicate highlights in the young sharp's hat and the "typically realistic" rendering of the dark-colored ribbon adorning the sleeve of the dupe's coat to be "on the same level of execution as the corresponding details in the Fort Worth [Kimbell] painting." Richard Spear, for one, disagreed, arguing that the rendering of the "featheriness in the ostrich plume" in the Kimbell's *Cardsharps* was far superior.

Justice Rose of the High Court, who evidenced considerable familiarity with art historical methodology and connoisseur-

ship, agreed with Spear, further noting that the artist failed to capture the "barbs of the feather extending over the hat" and that the feather had a "waxiness that ostrich feathers do not have." Citing other weak passages, including the dice holder, which is out of perspective, and the stiff handling of the drapery, the court opined that Sotheby's was "entitled to come to the view that the quality of the [Thwaytes] Painting was not sufficiently high to merit further investigation."

As to whether Sotheby's had failed in its duty of care, the court again sided with the auction house, noting that leading houses are expected to have highly qualified people devote enough time to examining a work to arrive at a firm opinion. Sotheby's, it said, was entitled to rely on its own qualified specialists and connoisseurship in assessing the painting; its specialists were reasonable in reaching their opinion; and there was nothing disclosed on visual examination that should have counteracted Sotheby's view that the painting did not have "Caravaggio potential."

The court further speculated that even "if Sotheby's had gone further in seeking views of other experts ... they would have

"... The court was faced with the question of how to define 'Caravaggio potential,' even if there were such an art historical classification, and how to ascertain the duty of care necessary to recognize that potential."

received many more negative views than positive." This statement comes in light of Sotheby's assertion that they would have consulted Christiansen, who disputes the Caravaggio attribution, *not* Mahon, who despite his distinguished reputation was already 96 years old, and who, in Sotheby's opinion, no longer had a reliable "eye." The court concluded, therefore, that the *Cardsharps* "probably would have made slightly more at auction, but not a great deal more" because the view of the scholars expressing negative opinions would have carried more weight than the views of Mahon and Gregori.⁸

TECHNICAL EXAMINATIONS

Finally, Thwaytes had argued that Sotheby's was negligent in failing to perform infrared testing, which would have revealed pentimenti and other "non-copy"

⁸ Regarding Marini's attribution of the painting to Caravaggio, Justice Rose noted that "none of the experts in the case invited me to place reliance on [his] opinion or to conclude that this would have affected the value of the painting."

features in his painting. While all of the specialists agreed that the presence of major pentimenti in a painting is indeed a mark of an artist's creative process, and generally indicates that a painting is not a copy, they disagreed as to the significance of the pentimenti in the Thwaytes *Cardsharps*.

“Sotheby’s, it said, was entitled to rely on its own qualified specialists and connoisseurship ...”

For Gregori, the numerous pentimenti in the placement of the young sharp’s hand and of the dupe’s head indicated a major revision, even prompting speculation that Thwaytes’ painting was the first version and the *Cardsharps* in the Kimbell Museum is an autograph copy of it. In the court’s opinion, however, the pentimenti indicated only minor changes to the original image — repositioning the dupe’s right hand and lengthening of the ribbon dangling from the young sharp’s elbow — consis-

tent with the revisions of a copyist. Furthermore, the court said, Sotheby’s was not required to perform infrared testing, which in any case, would not have alerted them to the “existence of some creative mind at work in the composition of the painting.” Nor did Sotheby’s have an obligation to ask outside experts to examine the x-rays, and, based on the evidence presented, it found no reason to believe that an external review of the x-rays would have caused Sotheby’s to revise its negative opinion.

DEFINING THE DUTY OF CARE

The High Court’s ruling suggests that a consignor’s negligence claim against an auction house is unlikely to succeed in cases where a broad scholarly consensus as to the artwork’s attribution has not been reached. The court’s summary of an auction house’s duty to a consignor “to express a considered opinion as to the sale value” of a work gives auction houses wide discretionary powers in determining authenticity. Under this ruling,

auction houses may rely on the connoisseurship and expertise of qualified in-house specialists without consulting outside experts, and are under no obligation to perform scientific examinations, even if the owner specifically requests them.

Since Mahon died in 2011, the *Cardsharps* has been on loan to London’s Museum of the Order of St. John, where it is insured for £10 million. Although the painting is displayed as a Caravaggio, the museum acknowledges on its website the controversy surrounding its attribution, wisely noting that, “Attribution is never an exact science, and it is not uncommon for paintings to move from the status of copy, to the hand of the master, or indeed vice versa.”

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• • •

AUTHENTICITY SUIT AGAINST HARING FOUNDATION DISMISSED APPEAL FILED

On April 9, twenty owners of purported artworks by Keith Haring (1958-1990) filed an appeal in federal court in New York after their lawsuit against the artist's foundation was dismissed.¹ They had accused the Keith Haring Foundation of "wrongfully destroying the value" of paintings they believed authentic by publicly labeling them "fakes, forgeries, counterfeits and/or infringements," and were seeking upwards of \$40 million in damages.

In a legal strategy used against several other artists' foundations and estates, including the Andy Warhol Foundation, Pollock-Krasner Foundation, and the Calder Foundation, usually unsuccessfully, the plaintiffs asserted that the Haring Foundation's actions in denying the authenticity of their works was motivated by its desire to "limit the number of Haring works" and thereby "inflate the value" of the artworks "that the Foundation and its members own and sell."

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¹ *Bilinski v. The Keith Haring Found.*, No. 14-cv-1085-DLC slip op. (S.D.N.Y. Mar. 6, 2015). Two separate actions against the Foundation were initially filed by the plaintiffs: 9 plaintiffs filed on February 21, 2014 and 11 plaintiffs filed on March 7, 2014. They were joined in a consolidated complaint filed on June 24, 2014, which was later amended on August 13, 2014.

anti-trust laws, but that it was liable for false advertising, defamation, and other offenses when it filed a lawsuit to shut down a 2013 exhibition in Miami featuring many of the disputed art-

works.² On March 6, 2015, Judge Cote granted the Foundation's motion to dismiss all the claims.

Not surprisingly, the news was welcomed by the Foundation whose Executive Director, Julia Gruen, told IFAR that it was "pleased with the dismissal of the lawsuit and believe[s] the decision will be affirmed on appeal."

The Foundation's pro-active stance against the Miami exhibition stands in contrast to the reluctance of many art specialists to render opinions on authenticity and the recent dissolution of several authentication boards and committees, including those set up for Andy Warhol, Roy Lichtenstein, and Jean-Michel Basquiat. Indeed, the Keith Haring Foundation itself stopped accepting works for authentication in September 2012. But in a press release circulated in 2013 in conjunction with its action against the Miami exhibition and its request to "remove all fake Haring works" from that exhibition, the Foundation made clear that it would "enforce the

² *Keith Haring Found., Inc. v. Colored Thumb Corp.*, No. 13-cv-20830-MGC (S.D. Fla. filed March 8, 2013). The case was settled on February 28, 2014 though a stipulation of dismissal.

Foundation's rights and protect the artist's legacy in every case of suspected fraud."

The Haring Foundation, established in New York by the artist in 1989, a year before his death, owns the intellectual property rights to his works, an art collection bequeathed by the artist, and an archive with documentation on the artist. Although short-lived (he died at 31), Haring was a prolific artist whose distinctive images, with their boldly outlined human and animal figures and often vivid colors, have been popularized on T-shirts, mugs and posters throughout the world. Haring himself established Pop Shops to sell these items, and the Foundation has earned considerable royalties and licensing fees from the sales. In 1986, Haring drew world media attention when, at the request of the Checkpoint Charlie Museum, he painted a 350-foot black, red and yellow mural (the colors of the German flag) on the Western side of the Berlin Wall.³

THE DISPUTE

The origins of the current legal dispute can be traced back to January 2007, when lead plaintiff Elizabeth Bilinski showed her collection to art dealer Lucas

Schoormans, who in March of that year submitted transparencies of 13 of Bilinski's purported Haring works to the Foundation for authentication. The submission was accompanied by provenance information provided by Angelo Moreno, a Downtown New York figure said to be Haring's friend, who maintains that he acquired the works as gifts from the artist. Moreno later sold them to Bilinski through graffiti artist Delta Cortez, who brokered the sales. In fact, all the 111 artworks at issue in the recently dismissed lawsuit — owned by Bilinski and the other plaintiffs — were acquired from Moreno.

On May 4, 2007, transparencies of an additional 28 Bilinski "Harings" were submitted for authentication to the Foundation. Three days later, the Foundation rejected all 41 of the submitted Bilinski works as "not authentic," and like many other artists' foundations and authentication committees, did not provide reasons. It did, however, add a statement, common in one form or another to most authentication committees, to the effect that its opinion could "change by reason of circumstances arising or discovered ... after the date of this opinion."

Such statements are not meant as obligations to reconsider every submission, although new information significant enough to potentially alter opinions would likely warrant reconsideration, but rather as disclaimers — legal protection — for the reviewing entity should later scholarship or other discovery come to light that alters the initial decision. Based on the Complaint, the plaintiff may have misunderstood this distinction.

"The Foundation's pro-active stance against the Miami exhibition stands in contrast to the reluctance of many art specialists to render opinions on authenticity and the recent dissolution of several authentication boards and committees ... Indeed, the Keith Haring Foundation itself stopped accepting works for authentication in September 2012."

When Bilinski attempted to sell her collection in 2008, the Foundation accused her of selling fraudulent works and threatened legal action if she didn't cease. According to Bilinski, the Foundation did not respond to her request to discuss the matter. In 2010, she tried to consign her works with Sotheby's, which did not accept them for sale despite the fact that, Bilinski asserts,

³ For an interview with Haring on the Berlin Wall commission, see, John Gruen, *Keith Haring The Authorized Biography* (New York: Prentice Hall Press, 1991).

one of its specialists told her he believed the works were authentic. The Gagosian Gallery also refused to offer the works for sale. In July 2010, Bilinski sought to resubmit her purported Harings to the Foundation for authentication, but the Foundation refused to reconsider its previous judgment.

The issue became public in March 2013 when Bilinski and the other plaintiffs participated in a Miami exhibition entitled “Haring Miami,” featuring 175 supposed Haring artworks. It was later estimated by the Foundation that “if the approximately 80 acrylic works on canvas in the show were real Harings, their collected value [alone] would be more than \$40 million.” As it was, however, the Foundation believed that all but one of the acrylics on view were fake.

On the second day of the 3-day exhibition, the Foundation sued the organizers and sought to obtain a temporary restraining order to shut down the show, which it said featured “fakes, forgeries, counterfeits, and/or infringements.” The exhibition’s organizers agreed to remove all but 10 works — the only ones the Foundation accepted as authentic based on the observations of a Foundation representative (David Stark) who had attended the opening night event. The exhibit

organizers also agreed to destroy all remaining copies of the exhibition catalogue, all but two of whose images, the Foundation said, were of fakes.

According to the plaintiffs’ now-dismissed complaint, one plaintiff, Dr. Arthur Canario, lost the sale of 8 different artworks to an unidentified museum in London as a result of the Foundation’s actions, and the value of all the plaintiffs’ works was diminished.

Two lawsuits, later consolidated, were filed against the Haring Foundation in early 2014. In the suits, twenty plaintiffs asserted various claims against the Foundation and associated individuals; the claims included federal and state anti-trust violations, false advertising, defamation, and tortious interference with prospective business relations.

In its March 2015 dismissal, the District Court for the Southern District of New York rejected the anti-trust assertions that (in the court’s words) the art market doesn’t sell Haring works without the Foundation’s approval because it fears “legal retribution from the Foundation.” The court found that both the federal (Sherman Act) and New York State (Donnelly Act) anti-trust claims lacked factual basis. Specifically, the accusations that a “group boycott” existed between “the defendants and

their allies” in the art market was overly broad; the plaintiffs, the judge said, “failed to allege sufficient information about the conspiracy.” As he put it, “Under the theory advanced in the Complaint, any refusal by an auction house, dealer, or gallery to sell a Haring without authentication by the Foundation could be a conspiratorial act. Such broad allegations do not give the defendants fair notice of the claim against them.” Moreover, the refusal by auction houses and galleries to sell the works could be explained “by unilateral decisions motivated by entirely lawful goals.” Additionally, the Foundation was not “the only means to obtain authentication of Haring works.”

“As the judge put it, ‘Under the theory advanced in the Complaint, any refusal by an auction house, dealer, or gallery to sell a Haring without authentication by the Foundation could be a conspiratorial act.’”

This is not the first time that courts have rejected such anti-trust allegations. Significantly, a 1995 lawsuit against the Pollock-Krasner Foundation and its (subsequently disbanded) Authentication Board was dismissed on substantially similar grounds.⁴

⁴ *Kramer v. The Pollock Krasner Found.*, 890 F. Supp. 250 (S.D.N.Y. 1995).

Notably, the court rejected the plaintiffs' argument that the Haring Foundation acted as a "standard-setting" organization. In doing so, the court distinguished the case from an anti-trust case that had been lodged against the Andy Warhol Foundation in 2007,⁵ which survived a motion to dismiss prior to the parties reaching a settlement agreement.

"As with all such cases, the ruling will rest on legal issues and not on the authenticity or lack thereof of the disputed works."

In the Warhol case, the plaintiff alleged a conspiracy between the Andy Warhol Foundation, which published his catalogue raisonné, and the Andy Warhol Authentication Board, which authenticated Warhol works; whereas, in the Haring case, the alleged conspiracy was between the Haring

Foundation and other players in the art marketplace. Moreover, in contrast to Warhol, there is currently no catalogue raisonné of Haring's work, and the court made much of this distinction (although its reasoning is not clear). In addition, the Haring Foundation stopped authenticating works in 2012. Thus, said the court, it could no longer be considered to control the authentication of Haring's work the way the Warhol Board did.

The Lanham Act claim alleging false advertising was dismissed because the Foundation's actions were not commercial speech. A defamation claim relating to the Haring Foundation's press release at the time of its suit against "Haring Miami" failed because the press release did not mention the plaintiffs, but solely the organizers of the Miami exhibition. A claim for tortious interference with prospective business relations was dismissed because the Complaint did not identify the would-be London buyer or allege that the Haring Foundation *et al.* knew of that

business relationship when they issued their Press Release and filed their 2013 lawsuit.

Additional claims for trade libel, intentional infliction of emotional distress, and unjust enrichment were also dismissed.

As noted, the plaintiffs have appealed the dismissal to the Second Circuit Court of Appeals in New York. As with all such cases, the ruling will rest on legal issues and not on the authenticity or lack thereof of the disputed works. While the Foundation's reasons for rejecting the works were never stated, and whether the reasons were based on concerns as to the provenance — 111 previously unknown and undocumented works suddenly appearing on the market as purported gifts by the artist — or the style, or other issues, or all of the above, it seems clear that the Foundation would not have gone to this amount of trouble if it was at all equivocal about its negative decision.

— S.F. and A.M.G.

⁵ *Simon-Whelan v. The Andy Warhol Found. for the Visual Arts*, No. 07 Civ. 6423 (LTS) (S.D.N.Y. May 26, 2009).

...

NY COURT DISMISSES SUIT AGAINST BAVARIA OVER PICASSO PORTRAIT APPEAL PENDING

A three-judge panel of the Second Circuit Court of Appeals in New York heard oral argument on April 23 to review a district court's dismissal of a lawsuit over a Picasso painting allegedly sold under duress during the Nazi era.¹ The painting, a 1903 Blue Period portrait of *Madame Soler* (FIG. 1), the wife of Picasso's Barcelona tailor, is currently in the collection of the Neue Pinakothek in Munich. At issue is whether the suit against the Free State of Bavaria, which controls the Pinakothek, can go forward in the United States under an exception to the Foreign Sovereign Immunities Act (FSIA). The lower court said "no".

"Coincidentally, the judge who dismissed the case ... was the same judge who previously heard a similar claim by the same plaintiffs over two other Picasso paintings now in U.S. museums, at which time he ruled more favorably for the claimants."

Coincidentally, the judge who dismissed the case, Judge Jed Rakoff of the U.S. District Court for the Southern District of New York, was the same judge who previously heard a similar case by the same plaintiffs over two other Picasso paintings now in U.S. museums, at which time he ruled more favorably for the claimants.

The plaintiffs in both cases are the heirs of Paul von Mendelssohn-Bartholdy (1875-1935), a wealthy Berlin banker and art collector, who was a descendant of the celebrated Jewish philosopher Moses Mendelssohn and great-nephew of the composer Felix Mendelssohn Bartholdy.

While not Jewish himself (his family had converted to Protestantism in the early 19th century), his prominent banking family was nonetheless identified with Judaism, and the plaintiffs point to economic losses he sustained under the Nazis.

The prior Picasso suit involved two major

New York museums. A group of Mendelssohn-Bartholdy heirs, led by his Berlin-based great-



FIGURE 1. PABLO PICASSO, *Madame Soler*, 1903. © 2015, Estate of Pablo Picasso/Artists Rights Society (ARS), NY. Ph: HIP / Art Resource, NY.

nephew Julius Schoeps, alleged that in 1934-1935 Mendelssohn-Bartholdy, under Nazi duress, had been forced to sell five Picasso paintings, including *Boy Leading a Horse* of 1905-06 (FIG. 2) and *Le Moulin de la Galette* of 1900 (FIG. 3).² The works were brought to Switzerland and sold to a German-Jewish art dealer, Justin Thannhauser, then based in Switzerland. Soon thereafter, Thannhauser sold the *Boy Lead-*

¹ *Schoeps v. Bayern*, No. 13-cv-2048, slip op. (S.D.N.Y. June 27, 2014), appeal docketed, No. 14-2739 (2d Cir. July 29, 2014).

² *Schoeps v. Museum of Modern Art and the Solomon R. Guggenheim Found.*, 594 F. Supp. 2d 461 (S.D.N.Y. 2009).

ing a Horse to William Paley, who later donated it to the Museum of Modern Art. Thannhauser retained the *Moulin de la Galette* as part of his personal collection, bequeathing it to the Guggenheim Museum in 1973.

In 2008, the two museums filed suit against the heirs to quiet title to the paintings, arguing that the sale to Thannhauser was voluntary. In a 2009 ruling, Judge Rakoff rejected the museums' request, holding that the case should proceed to trial because triable issues of fact existed as to whether the sales to Thannhauser had been voluntary or forced. Moreover, New York law, he decided, rather than Swiss law (more favorable to the museum), would govern for the MoMA painting, even though the 1936 sale to Paley took place in Switzerland. Shortly after the ruling, the museums reached an undisclosed settlement with the heirs, and the works remain in their collections.

The pending case, *Schoeps v. Bayern*, involves another one of the five Picassos — *Madame Soler* — sold to Thannhauser. Unlike the earlier claims involving MoMA and the Guggenheim, however, the primary focus of the current case is not the sale to Thannhauser, but rather a subsequent sale in the mid-1960s and whether that sale gives New York jurisdiction to hear the case.

Mendelssohn-Bartholdy died in May, 1935 (of natural causes) and Thannhauser fled Europe in 1937, settling in New York in 1940 with *Madame Soler* still in his possession. In 1964, Halldor Soehner, then a senior curator at the Bavarian State Painting Collections on a study trip to the U.S., met with Thannhauser in New York and viewed the painting. The Mendelssohn-Bartholdy heirs assert that the two men came to an agreement regarding the sale of the Picasso at this meeting.

Several months later, Soehner, now director general of the Bavarian Collections, met with Thannhauser again, this time in France, where Thannhauser drew up a written agreement to sell the painting in 1965 for 1,755,000 Swiss francs. *Madame Soler* was shipped to Germany and has been on display at the Pinakothek ever since. Bavaria claims that it was at the meeting in France, not the earlier one in New York, that the parties reached an agreement concerning the painting.

Led by Julius Schoeps, more than two dozen heirs to Mendelssohn-Bartholdy attempted unsuccessfully to recover *Madame Soler* from the Pinakothek in 2011. They asked that the dispute be brought before the "Limbach Commission," established by the German government expressly to resolve ownership disputes over Nazi-era

works in the state's possession. Unfortunately for the heirs, the Commission, whose opinions are not legally binding, only hears disputes when both parties consent, and in this instance, the Pinakothek did not consent.

Following this failed attempt, the heirs filed suit against Bavaria in March 2013 in the Southern District of New York. Bavaria sought to dismiss the case under the Foreign Sovereign Immunities Act (FSIA), stating that the U.S. court lacked jurisdiction to sue them.

The heirs argued that the case fell within the so-called "commercial activity" exception to the FSIA, basing their argument on the 1964 meeting between Thannhauser and Soehner (the representative of a state-run museum) in New York, where, they contend, the sale of the painting actually took place. That constitutes the "substantial contact with the United States" requirement under the "commercial activity" exception. Alternatively, the heirs contended, the transaction fell within the "commercial activity" exception because the sale of the Picasso had a "direct effect" on the U.S. art market as a whole.

In its June 2014 decision, the court rejected the "substantial contact" argument, stating that the meeting between Thannhauser and Soehner in New York

was merely preliminary and of “no legal consequence” because the actual agreement to sell the painting took place in France. Judge Rakoff was even more dismissive of the claim that the sale of the Picasso had a “direct effect” on the U.S. art market, calling this argument “balderdash.” Rakoff stated that the only person directly affected by the sale was Thannhauser and that any effect on the U.S. art market would have been indirect at best.

Finding that the sale of the Picasso did not fall within the com-

mercial activity exception to the FSIA, Judge Rakoff dismissed the case for lack of jurisdiction. The Mendelssohn-Bartholdy heirs immediately appealed that decision to the Second Circuit Court of Appeals. At the April 23 oral argument, Judge Wesley, who led the three-judge panel, seemed skeptical of the heirs’ argument that the New York meeting was “substantial” enough to invoke the commercial activity exception, underscoring that the claimants “can’t get past the contract concern.” The contract, he said, wasn’t signed in the U.S.

"Judge Rakoff was even more dismissive of the claim that the sale of the Picasso had a "direct effect" on the U.S. art market, calling this argument "balderdash."

and allowing that line of reasoning would leave open to U.S. courts every transaction enacted in Europe but discussed preliminarily in the U.S. A ruling, the judge added, will be issued “in due course.”

—NICHOLAS DIETZ

Legal Associate, IFAR and S.F.

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RULINGS IN TWO RESTITUTION BATTLES FOR CONTESTED PISSARROS

Perhaps it's a coincidence, but two heated restitution claims against museums — one in Spain and one in the U.S. — concern paintings by the late 19th century French artist Camille Pissarro. This spring, one was dismissed and the other inched a little way forward.

COURT DISMISSES LAWSUIT AGAINST MADRID MUSEUM

On June 4, as IFAR was at press, a California district court dismissed a lawsuit over Pissarro's *Rue Saint-Honoré, après-midi, effet de pluie* (FIG. 1), taken by the Nazis in 1939 in an alleged forced sale.¹ Ruling on a Summary Judgment motion, the court applied Spanish law to conclude that Spain's Thyssen-Bornemisza Collection Foundation, which has the painting, owns it based on the doctrine of adverse possession. The heirs of Lilly Cassirer Neubauer, who have sought the return of the painting for more than a decade, will presumably appeal.

As has been discussed many times on the pages of this Journal,² Cassirer, whose family originally acquired the painting

in 1898 directly from Pissarro's dealer, sold the work to a Nazi official in 1939 for a price the family asserts was well below market value. In 2000, her grandson, a California resident (now deceased), learned of the painting's location and requested its return. After the Spanish government refused, he filed suit in 2005 against Spain and the Collection in U.S. District Court for the Central District of California.

During the course of the litigation, the Collection unsuccessfully challenged the jurisdiction of the court as well as a California statute that extended the statute of limitations for claims seeking the return of stolen works



FIGURE 1. CAMILLE PISSARRO. *Rue Saint-Honoré, après-midi, effet de pluie*, 1897. Oil on canvas, 32 by 25.5 inches (81 x 65 cm), being claimed from the Thyssen-Bornemisza Collection, Madrid.

of art. Ironically, the June ruling in favor of the Collection comes immediately on the heels of a March ruling from the *same* court that was much more favorable to the Cassirer heirs. As certain arguments may only be raised at specified times over the course of a lawsuit, however, the Collection wasn't able to make what appears to be the winning argument until the Summary Judgment stage.

As an initial matter in the June ruling, the California district court conducted a careful choice of law analysis to conclude that Spanish law applies because Spain's relationship to the painting is more significant than California's. Then, applying Spain's law of adverse possession, the court ruled that the Collection had openly possessed the painting for a sufficient length of time (since 1992) and under such circumstances as to acquire legal ownership. In California, and essentially the entire U.S., the doctrine of adverse possession applies only to real property (land), but in Spain it also applies to personal property, such as art.

In the court's earlier ruling in March,³ it decided against the

¹ *Cassirer v. Thyssen-Bornemisza Collection Found.*, No. 05-cv-3459-JFW, slip op. (C.D. Cal. June 4, 2015).

² See, for example, *IFAR Journal*, Vol. 15, no. 1 (2014); Vol. 13, no. 3 (2012); Vol. 12, no. 4 (2011).

³ *Cassirer v. Thyssen-Bornemisza Collection Found.*, No. 05-cv-3459-JFW, slip op. (C.D. Cal. Mar. 13, 2015).

museum and ruled that Lilly Cassirer had *not* waived her rights to the painting when she reached a monetary settlement with Germany in 1958.

The case will likely end up before the Ninth Circuit Court of Appeals for the *third* time, as the Cassirer heirs are entitled to file an appeal of the district court's dismissal.

CLAIM FOR OKLAHOMA UNIVERSITY'S PISSARRO TRANSFERRED FROM NY—WILL THAT MAKE IT OK?

On April 7, a federal district court in New York complied with an order by the Second Circuit Court of Appeals granting Léone Meyer a procedural victory in her lawsuit against the University of Oklahoma⁴ over a Pissarro painting she alleges was stolen by the Nazis in 1941.

As previously reported in *IFAR Journal*,⁵ Meyer filed suit against the University in January 2014 in Federal District Court for the Southern District of New York seeking the return of Pissarro's *Bergère rentrant des moutons* (also known as "*La Bergère*") (FIG. 2), which once belonged to her father, Raoul Meyer, a

French-Jewish art collector and owner of the Parisian department store Galeries Lafayette. Raoul located the work in Switzerland after the war, but a Swiss court rejected his claim in 1953.

Meyer argued that the New York court had jurisdiction because after the war, the Pissarro resurfaced in a New York gallery, where it was purchased by an Oklahoma couple who bequeathed it to the University's Fred Jones Jr. Museum of Art. The museum has said that it is the rightful owner. The district court rejected Meyer's argument and dismissed the suit for lack of personal jurisdiction, stating that Meyer should re-file her case in Oklahoma.

Meyer, however, appealed the dismissal to the U.S. Court of Appeals for the Second Circuit, arguing that the case should have been *transferred* to federal court in Oklahoma, rather than *dismissed*. In a March 2015 ruling, the Second Circuit agreed with Meyer and remanded the case back to the district court, holding that Meyer must be given the opportunity to show that transferring the case would "serve the interest of justice."



FIGURE 2. CAMILLE PISSARRO. *Bergère rentrant des moutons*, 1886. Oil on canvas, 18 ¼ x 15 inches, being claimed from the Fred Jones Jr. Museum of Art in Oklahoma.

Although the district court complied, in an April 2015 ruling, it expressed its strong disagreement with the Second Circuit's decision, stating that the reason it had not addressed the issue of transferring the case in its earlier decision was that Meyer had never moved for a transfer. The district court also blasted Meyer for filing suit in New York in the first place, calling it a "transparent gambit ... contrived as a forum-shopping strategy," and stated that "it was obvious from the outset that [the New York] court lacked personal jurisdiction over

"The University now faces two trials—one in federal court; the other in the Oklahoma court of public opinion."

⁴ *Meyer v. University of Oklahoma*, No. 1:13-cv-03128 (S.D.N.Y. April 7, 2014).

⁵ Nicholas Dietz, "Suit against Oklahoma Museum Raises New Questions about Nazi Era Works," *IFAR Journal*, Vol. 15, nos. 3 & 4 (2014), pp. 17-19.

the Oklahoma Defendants.” Nevertheless, the court reviewed what it called the “never-made motion for transfer.”

Holding that the “traditional factors in a transfer analysis,” such as the convenience of witnesses, the location of relevant documents, and overall trial efficiency, favored transferring the case to Oklahoma, and that the University’s arguments concerning Oklahoma’s statute of limitations and immunity from suit “should be left to the courts of [that] state,” the district court in New York ordered *Meyer v. University*

of Oklahoma transferred to the District Court for the Western District of Oklahoma.

Whether the Oklahoma court will be more sympathetic to Meyer’s claim remains to be seen, but what is clear is that she has garnered significant public and political support.

On May 22, the Oklahoma House of Representatives unanimously passed Resolution 1026 directing the University and its museum “to conduct provenance research on objects in its collection. . . .” It also directs other procedures

toward the resolution of Nazi-era claims, including the waiving of “technical defenses,” such as statutes of limitations and laches, and urges parties to resolve disputes in a “mutually agreeable manner.” Four days later, the University released a statement saying that it is “already researching the provenance” of works and is also negotiating a “mutually agreeable solution” regarding the Pissarro. It is clear that the University now faces two trials—one in federal court; the other in the Oklahoma court of public opinion.

— N.D. and S.F.

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LAWSUIT OVER NORTON SIMON CRANACHS CREEPS FORWARD MUSEUM FILES ANSWER TO COMPLAINT



FIGURE 1. LUCAS CRANACH THE ELDER, *Adam and Eve*, c. 1530. Both, oil on panel, 75 x 27 ½ in. Collection, Norton Simon Museum, Pasadena, but claimed by Marei von Saher.

The drawn-out legal feud over Lucas Cranach the Elder’s *Adam and Eve* diptych in the Norton Simon Museum (FIG. 1) crept forward this spring as a federal court in California denied yet another museum motion to dismiss, and the museum finally responded officially to the allegations against it.¹

In its most recent motion to dismiss, the museum argued that the statute of limitations had expired before plaintiff Marei von

Saher, daughter-in-law and heir to the Dutch Jewish art dealer Jacques Goudstikker, filed her claims. The Central District of California court disagreed and denied the motion on April 2, explaining that a substantive feature of California law made von Saher’s lawsuit timely. With its motion to dismiss denied, the Norton Simon, on April 16, filed its formal Answer to von Saher’s First Amended Complaint, which seeks the restitution of the Cranach panels that belonged to Goudstikker before World War II.

¹ *Von Saher v. Norton Simon Museum of Art*, No. 07-2866-JFW-JTL, slip op. (C.D. Cal. Apr. 2, 2015).

It has been nearly eight years since von Saher filed her claim in 2007, but the court has yet to get to the merits of the case, which has been dismissed by the district court twice, but revived by the Ninth Circuit Court of Appeals both times.²

The district court initially dismissed von Saher's claims because the California statute of limitations under which they were filed, the court said, unconstitutionally infringed on the federal government's exclusive power to conduct foreign affairs and to redress injuries arising from war. Although the Ninth Circuit affirmed that ruling, it remanded the case to provide von Saher an opportunity to amend her complaint and re-file it under a different California statute. The district court again dismissed her claims, this time saying that they conflicted with, and were therefore pre-empted by, federal policy. The Ninth Circuit reversed again.

Now that the museum has filed its Answer to von Saher's complaint, the discovery process will begin and summary judgment motions and a trial, if necessary, loom on the horizon.

FACTUAL BACKGROUND

To recap just some of the complicated details: Goudstikker bought the Cranachs at a 1931 Berlin auction and retained them until he fled Holland in 1940 on the eve of the Nazi invasion. The panels ended up in the hands of Nazi Reichsmarschall Hermann Goering through an involuntary sale. After the war, they were recovered by the Allies and sent to the Munich Central Collection Point, from which, in accordance with U.S. policy, they were sent to the Netherlands in 1946 to be returned as part of that country's internal restitution process. In the meantime, Goudstikker died in a shipboard accident and his widow, Desi, did not file a claim for the Cranachs by the Dutch deadline of July 1951. The panels were not part of a subsequent 1952 Dutch government settlement that Desi made regarding other works. The parties disagree as to why.

In 1962, Prince George Stroganoff-Scherbatoff, an officer in the U.S. Navy and descendant of two aristocratic Russian families, filed a claim for the panels with the Dutch government.

He believed that the Cranach panels were part of his family's art collection that had been confiscated and nationalized by the Bolsheviks and later sold by the Soviet government at a 1931 Berlin auction entitled "Stroganoff Collection, Leningrad," where Goudstikker purchased them. In 1966, the Dutch government transferred the paintings to Stroganoff. Von Saher's claim, however, asserts that Stroganoff was mistaken and the panels were never part of his family's collection. A few years later, in 1970-1971, Stroganoff sold the panels (through a dealer) to Norton Simon for \$800,000.

A PARTICULARITY OF CALIFORNIA LAW

On April 2, 2015, the federal court for the Central District of California denied the museum's motion to dismiss von Saher's claims as untimely. The museum had initially raised the statute of limitations as an affirmative defense in 2011; however, the court found it unnecessary to reach that issue as it had failed to find jurisdiction to hear the

"It has been nearly eight years since von Saher filed her claim in 2007, but the court has yet to get to the merits of the case, which has been dismissed by the district court twice, but revived by the Ninth Circuit Court of Appeals both times."

² For discussions of previous developments and additional details in this case, please see *IFAR Journals* Vol. 10, no. 2 (2008) and Vol. 15, no. 2 (2014).

case (a decision, which, as we've already noted, has since been reversed by the appellate court).

Upon remand, the district court concluded that the museum was entitled to a ruling on the unresolved untimeliness issue and invited it to re-file a similar motion. Although the court declined to consider several other issues at this stage, including whether the Act of State doctrine bars von Saher's claims, it did address the discrete issue of the timeliness of von Saher's replevin and conversion claims.

Assuming all of von Saher's facts to be true (as the court is obligated to do at this stage in the proceedings), the district court concluded that the six-year limitations period for her claims under California Code of Civil Procedure 338(c)(3) only began to run when von Saher *actually* discovered that the Cranachs were in the Norton Simon Museum in 2000.

The court based its ruling on California case law dating back as far as 1880, which states that "each time stolen property is transferred to a new possessor, a new tort or act of conversion has occurred."³ Accordingly, California courts have held that the

statute of limitations in an action seeking to recover stolen property begins to run anew against each subsequent purchaser because *each* subsequent possessor commits a new act of conversion against the true owner, thus triggering a new limitations period. Notably, this remains so *even if* a subsequent possessor is a good faith purchaser. The six years, however, only begin to run upon the rightful owner's *actual* discovery of his or her property in someone else's possession.

At the heart of this law is the fundamental precept that "a thief cannot convey valid title" and that "stolen property remains stolen property, no matter how many years have transpired from the date of the theft."⁴ The court explained that the rationale is based on the substantive law of torts, which is defined differently by each state.⁵ According to California (and New York) law, and unlike the law of some other states, expiration of the statute of limitations merely extinguishes the owner's right to seek a remedy from the thief or possessor; it does *not* divest the owner of title or convey title to the thief or

possessor. The court noted that it remains an open question of California law whether an owner who learns of his or her property's whereabouts yet fails to file a lawsuit within the limitations period can file suit against a subsequent possessor.

In sum, the court ruled that the museum's purchase of the Cranachs from Stroganoff in 1970-1971 (even if in good faith) constituted a new act of conversion under California law, and the six-year limitations period did not commence until von Saher *actually* discovered that the paintings were in the museum's possession on October 25, 2000. According to von Saher's First Amended Complaint, Desi was unaware of the paintings in the museum's collection. Thus, von Saher's lawsuit was timely.

THE MUSEUM'S ANSWER

In a strongly worded 27-page Answer to von Saher's First Amended Complaint, the Norton Simon contested many of von Saher's factual assertions, including her statements that the Dutch government did not act reasonably after the war, that there was no restitution proceeding relating to the Cranachs, and that Desi never entered into a settlement agreement or otherwise waived her rights to the panels. The museum also countered von

³ Opinion at 8 (citing *Harpending v. Meyer*, 55 Cal. 555 (1880) (citing favorably *Wells v. Ragland*, 31 Tenn. 501 (1852))).

⁴ Opinion at 9, quoting *Naftzger v. American Numismatic Soc'y*, 42 Cal. App. 4th 421, 432 (1996).

⁵ The court rejected the museum's reliance upon *O'Keeffe v. Snyder*, 83 N.J. 478 (1980) because New Jersey tort law is directly contrary to California law on this point.

Saher's assertion that a claim by Desi for the Cranachs in 1951 would not have received a fair hearing, and also denied that the works were never returned to their "rightful owner(s)." Additionally, the museum responded to von Saher's claims with twenty

assorted affirmative defenses, including various claims of superior title, as well as arguments that her claims are barred by, *inter alia*, the Act of State doctrine, the statute of limitations, laches, and/or the foreign affairs doctrine.

Although this landmark case is finally moving forward, the museum's detailed and forceful Answer suggests that there may still be a long way to go.

—A.M.G. and S.F.

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ARTISTS RESALE ROYALTIES BACK IN THE NEWS APPELLATE DECISION IN CALIFORNIA KEEPS STATUTE ALIVE — IN PART FEDERAL LAW PROPOSED — FOR THIRD TIME

CALIFORNIA COURT KEEPS BABY BUT NOT BATH WATER

On May 5, the Ninth Circuit Court of Appeals issued a decision¹ in a 2011 case that challenged the California Resale Royalties Act (CRRRA),² the only U.S. law in the U.S. that recognizes resale royalty rights (*droit de suite*) for artists.³ In its 31-page opinion, an *en banc* (full) panel of the appellate court struck down the portion of the state law

that required royalties to be paid on out-of-state sales. The court, however, stopped short of throwing the whole thing out, as a lower court had previously done.

The CRRRA, which went into effect in 1977, requires sellers (or a seller's agent) to pay a 5 percent royalty to living artists (or their heirs for 20 years after the artist's death) on fine art sold for more than \$1,000, so long as the price is higher than originally paid and the artist is a U.S. citizen or a California resident for at least two years. The royalty does not apply to "initial sales," such as sales made by an artist or his dealer directly. Rather, it accrues each time an artwork is resold by a gallery, dealer, auction house, broker, museum, or other seller's agent. As enacted, the law required royalties to be paid if

"the seller reside[d] in California or the sale [took] place in California." The recent Ninth Circuit decision, however, severed wording from the law so that it now applies *only* to California sales.

The lawsuit began as a class action filed by artists Chuck Close and Laddie John Dill, along with the Estate of Robert Graham, in October 2011 against Sotheby's. The artists claimed that the auction house had violated the CRRRA by systematically refusing to pay royalties and by failing to apprise them of royalty-generating sales. They also accused Sotheby's of engaging "in a pattern of conduct intended to conceal" facts linking sales to California. On the same day, Close, Dill, and the Sam Francis Foundation instituted a similar class action lawsuit against Christie's.

¹ *Estate of Robert Graham v. Sotheby's, Inc.*, Nos. 12-56077 and 12-56067, *slip op.* (9th Cir. May 5, 2015).

² Cal. Civil Code § 986 (1976).

³ For IFAR's previous coverage of the case and subject matter, please see *IFAR Journal* Vol. 12, no. 4; Vols. 14, no. 4/15, no. 1; and Vol. 15, nos. 3 & 4. See also, videotape of the *IFAR Evening* of November 25, 2013: "Artists Resale Rights in the U.S.: Overdue or Shouldn't Do?" posted on www.ifar.org.

In May 2012, a California district court reviewing the suits struck down the CRRA in its *entirety*, ruling that the Act's regulation of sales outside California was an impermissible regulation of out-of-state conduct in violation of the dormant Commerce Clause of the U.S. Constitution. The Commerce Clause⁴ reserves the right to regulate interstate commerce to the federal government and not the states. After rejecting the entire CRRA, the court dismissed the lawsuits against the auction houses as they relied on that statute.

The plaintiff artists and artists' foundations appealed to the United States Court of Appeals for the Ninth Circuit, which consolidated the cases and added a related suit against the online auction site eBay. The Ninth Circuit heard oral argument as a three-judge panel in April 2014, but then, unusually, announced that it would re-hear oral argument *en banc* before that panel had issued a ruling.

In its much-anticipated May 5 ruling, the Ninth Circuit "easily concluded" that the royalty imposed upon California residents on out-of-state sales was an impermissible regulation of wholly out-of-state conduct. The court explained with an example: "If a California resident

has a part-time apartment in New York, buys a sculpture in New York from a North Dakota artist to furnish her apartment, and later sells the sculpture to a friend in New York, the Act requires the payment of a royalty to the North Dakota artist — even if the sculpture, the artist, and the buyer never traveled to, or had any connection with, California."

Rather than strike the law in its entirety, however, as the lower court had done, the Ninth Circuit chose to sever the unconstitutional component. The law itself includes a severability clause, noting that if any portion of the law was deemed invalid, the remainder of the law should remain intact. The revised royalty provision of the CRRA applies only to sales *within* California, and now reads:

Whenever a work of fine art is sold and the sale takes place in California, the seller or the seller's agent shall pay to the artist of such work of fine art or to the artist's agent 5 percent of the amount of such sale.

One judge dissented in part from the majority's opinion and would have retained the portion of the CRRA that required California residents to pay royalties on the sale of qualified works *regardless* of whether the sale took place

"Rather than strike the law in its entirety, however, as the lower court had done, the Ninth Circuit chose to sever the unconstitutional component. ... The revised royalty provision of the CRRA applies only to sales *within* California."

in or outside of California. He would have decided the case on the narrower ground of the CRRA as applied to the named out-of-state defendants — Christie's and Sotheby's — as no California resident was named in the case. Two other judges wrote separately to say that they, too, would have decided the case on more narrow grounds and that the majority opinion unnecessarily decided that the CRRA is unconstitutional as applied to out-of-state sales by California residents.

Because the district court had previously ruled that the CRRA fell in its entirety, it did not reach all of the arguments made by the defendants in their motion to dismiss. As the plaintiffs' claims based on sales that took place in California remain alive, the Ninth Circuit remanded that portion of the case to the three-judge panel for its consideration. Some of the remaining issues include the auction houses' argu-

⁴ U.S. Const. Art. I, § 8, cl. 3.

ment that the CRRRA is preempted by federal copyright law, and eBay's argument that it is neither a seller nor a seller's agent. The three-judge panel will likely remand those outstanding issues in turn to the district court.

NATIONAL LEGISLATION REINTRODUCED

As the California state resale royalty was being challenged, bills proposing a national resale royalty were introduced in both houses of the U.S. Congress. The identical bills, entitled the American Royalties Too (ART) Act of 2015, were introduced on April 16; in the House (H.R.1881) by Rep. Jerrold Nadler (D-NY) and in the Senate (S. 977) by Sen. Tammy Baldwin (D-WI).

The House bill currently has 8 co-sponsors, and the Senate bill, one co-sponsor. Similar bills were proposed in the two previous Congressional sessions, but failed to make it to a vote. Its fate in this session is no more certain, although in late 2013, the U.S. Copyright Office, which previously opposed a royalty, issued a more favorable report.

If passed, the ART Act of 2015 would provide a resale royalty of five percent (up to \$35,000) of the sales price for any work of visual art sold at auction for \$5,000 or more at any auction house with at least \$1 million of visual art sales during the previous year. The bill envisions visual artists' copyright collecting societies collecting the royalties and

distributing them to the artists (or their heirs) at least four times per year. Unlike the California law, the proposed federal legislation would extend for 70 years after an artist's death and apply to artwork sold at a loss. It would not apply to private sales or sales through galleries, although that provision would be reviewed after 5 years.

A national resale royalty would create reciprocity with other nations that already have such rights and would enable U.S. artists to collect resale royalties when their works are sold at auction in the E.U. and more than 70 other countries.

— A.M.G. and S.F.

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ERRATUM

Re: "Swiss Museum Accepts Gurlitt Trove and Publishes Images," *IFAR Journal*, Vol. 15, nos. 3 & 4:

There is a typographical error on p. 27, column 2, line 13, regarding the Cézanne. It should state that the entry in the new online Cézanne catalogue raisonné was updated to indicate that the painting is in the: "Gurlitt Estate, Salzburg (2014)," NOT "(1914)."

In Brief—

TWO GURLITT WORKS RETURNED

Two paintings that a provenance Task Force assigned to research the clandestine collection of Cornelius Gurlitt had determined were looted during the Nazi era have now been restituted to their true owners. The first, Matisse's *Seated Woman* of 1921, was restituted to the family

of Paul Rosenberg, the French-Jewish art dealer from whom it was taken in 1941. The second, Max Liebermann's *Two Riders on a Beach* of 1901, was returned to David Toren, a New York resident and the grand-nephew of its pre-war owner. Toren, 90 years old and blind, has since

announced that the painting will be put up for auction at Sotheby's in London on June 24th. He told the *New York Times* that, due to his eyesight, "he can no longer appreciate the painting" as he did when he was last saw it as a child.

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RENEWED AGREEMENT WITH EL SALVADOR

On March 8, the U.S. and El Salvador extended for another five years their Memorandum of Understanding (MOU) to protect "at risk" cultural heritage of El Salvador. Under the terms of the bilateral agreement, objects entering the U.S. must be accompanied by an export permit issued by El Salvador or, for pre-Columbian archaeological objects, accompanied by documentation verifying they left that country prior to 1995. If from the Cara Sucia region, the date is 1987.

Cooperation between the two countries to protect cultural objects began in 1987, when the U.S. imposed emergency restrictions. A formal MOU under the Cultural Property Implementation Act (CPIA) was signed in 1995. Under the CPIA, the MOUs must be renewed every five years. The Designated List of restricted types of objects includes Pre-Hispanic material dating from approximately 1500 B.C. to 1550 A.D., including stone sculptures, ceramic polychrome vessels, figu-

rines, stamp seals, drums, and effigies. The complete Designated List can be found on the U.S. Department of State website, as well as on IFAR's Art Law & Cultural Property Database.

Currently, the US has bilateral agreements (MOUs) under the CPIA with 15 countries, but the agreements with Nicaragua and Italy are due to expire within a year and must be renewed.

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FRENCH COURT SHORT-CIRCUITS PICASSO'S ELECTRICIAN

March 20 marked the legal denouement to the bizarre story IFAR covered in depth in 2011 (see Vol. 12, no. 2, "Picasso Gave *What to Whom?*"). A criminal court in Grasse in southern France found Pierre Le Guennec and his wife

Danielle guilty of "recel" (knowing possession of stolen art), and ordered them to give up all 271 Picasso works in their possession to the Picasso Administration. The court also imposed a two-year suspended sentence.

The three-day trial, like the story itself, was essentially a "he-said," "she-said" affair. The Le Guennecs, both in their seventies, insist (although their accounts vary) that Picasso or his second wife Jacqueline gave the works

to them as gifts c. 1970. But the couple kept them hidden away in a box all these years, until they brought them from their home in the south of France to the Picasso Administration in Paris in 2010 for authentication. They got good news that the works were authentic, and bad news, that they were stolen. The Picasso heirs insist that neither Picasso nor Jacqueline would have ever given such a large trove of works to anyone, and had Picasso given them as gifts, he would have signed them; whereas, all but one of these works were unsigned.

If the Le Guennecs did not steal the works, it is not clear who did, and any witnesses to the crime — no longer punishable due to the statute of limitations — may be dead. The Picasso family's attorney suggested in court that Le Guennec was a "mule" for international art criminals. Noted Picasso biographer John Richardson told IFAR in 2011 that he believed this cache was part of a large shipment of belongings that Picasso sent from Paris to his home in Cannes. Richardson himself had examined some of the shipment contents more

than 50 years ago, and like the Le Guennec trove, the material he examined contained mainly artworks on paper that were not systematically organized.

The returned works themselves, mainly small works on paper, collages and drawings, range in date from approximately 1900 – 1932. The most valuable are a group of Cubist still-lives dating to c.1912-1915 (FIG. 1). There are also a couple of notebooks containing 97 drawings, and 15 studies for Picasso's monumental 1923 oil painting, *The Three Graces*.



FIGURE 1. *Still-Life, Glass and Sand.* One of the nine Pablo Picasso still-lives in the Le Guennec trove. ©2015 Estate of Pablo Picasso/ARS, NY. Ph: AP.

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CAMBODIA POSTSCRIPT

The ancient temple of Prasat Chen in Cambodia's Koh Ker region came one step closer to being recreated this May when the Cleveland Museum returned the sixth of the temple's original nine sculptures. The museum voluntarily made the decision to return the 10th century sandstone *Hanuman* (FIG. 1) — a Hindu god with a human body and the head and tail of a monkey — after recent excavations uncovered the sculpture's pedestal and an earring that was missing from the right side of its head.

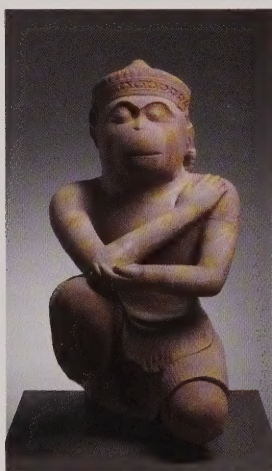


FIGURE 1. Sandstone statue of Hanuman, the Hindu monkey god, Koh Ker, c. 921-945 A.D. Returned to Cambodia by the Cleveland Museum in May.

As IFAR has written about extensively,¹ Cambodia asserted in 2012 that several sculptures located in the United States had been stolen from the archaeological site c.1970 as civil war raged, and were then illegally exported.

In 2013-2014, four sculptures were returned voluntarily: two from the Metropolitan Museum, one from Christie's, and one from the Norton Simon Museum in Pasadena. A fifth sculpture was returned by Sotheby's pursuant to an out of court settlement following litigation in a New York federal court. Cambodia, which made recovering the sculptures a national priority, plans to recreate the original battle scene from the Prasat Chen Temple in the new Cambodian National Museum. The original scene showed seven figures witnessing a mythological duel between the Hindu warrior *Duryodhana* and his cousin *Bhima*.

The Cleveland Museum's curator of Indian and Southeast Asian art, Sonya Quintanilla, travelled to the Prasat Chen site last year with a mold of the base of the

Hanuman, but it didn't match any of the excavated pedestals, so the museum concluded that the sculpture hadn't come from the site. Quintanilla nonetheless continued to research the sculpture's provenance and discovered that the head and body had been sold separately by British collector Douglas Latchford in 1968 and 1972, respectively. That information (it was Latchford who had sold the other returned sculptures), combined with new archaeological evidence unearthed at the site, persuaded the museum to return the work. When it did, it also entered into a Memorandum of Understanding with the National Museum of Cambodia to facilitate joint projects between the two institutions.

The 3.5 foot, 800-pound statue of *Hanuman* had been in the Cleveland Museum collection for more than 30 years. It had purchased the work in 1982 from the distinguished and now deceased New York art dealer/collector Robert Ellsworth, who had acquired it from the estate of Christian Humann, whose noted Pan-Asian Collection had been widely exhibited.

¹ See *IFAR Journals*, Vol. 13, no. 4 (2013), Vol. 14, nos. 1 & 2 (2013), Vols. 14, no. 4//15, no./1 (2013-14), and Vol. 15, no. 2 (2014).

— A.M.G. and S.F.

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**BROAD CULTURAL PROPERTY BILL INTRODUCED IN CONGRESS
INCLUDES IMPORT RESTRICTIONS ON SYRIAN OBJECTS
DETRACTORS WEIGH IN**

On March 19, Congressional lawmakers introduced a bill (H.R. 1493) intended to curb illegal trafficking of cultural objects, and at the same time, impose import restrictions on certain types of Syrian objects.

Known as the “Protect and Preserve International Cultural Property Act,” the proposed legislation is in part a response to U.N. Security Council Resolution 2199 of February 2015, aimed at counteracting the financing of extremist groups such as ISIL (also known as ISIS), which are said to be trafficking in cultural objects—as well as oil—to fund their recruitment efforts and terrorist activities. The U.N. resolution directed member states to take action to stem the recruitment and also prevent the trade in Iraqi and Syrian cultural artifacts illegally removed from those war-ravaged countries. A similar bill was introduced into Congress late last year (H.R. 5703), but never made it out of committee.

If passed, the Act—broad in scope, and much too broad according to detractors—would make it U.S. policy to protect and preserve international cul-

tural property “at risk of looting, trafficking, and destruction due to political instability, armed conflict, or natural or other disasters.” Citing recent “irreparable losses of humanity’s common cultural heritage” in Mali and Egypt (political instability), Haiti and South-east Asia (natural disasters), and Iraq and Syria (armed conflict), the bill underscores that such protection is a “vital part of United States cultural diplomacy.” No doubt, the specter of recent videos showing ISIS militants bulldozing objects and ransacking buildings in ancient Nimrud and Mosul was on the legislators’ minds.

The Bill includes provisions to bolster efforts under current laws, such as the National Stolen Property Act, various Customs statutes, and the Cultural Property Implementation Act of 1983 (CPIA), to prevent the importation and trafficking of certain types of cultural objects. More specifically, it would create a new bureaucratic framework, comprising a U.S. Coordinator for International Cultural Property Protection charged with managing efforts among the multiple Federal agencies already

involved in these activities, and a new Committee on International Cultural Property Protection, to be composed mainly of representatives from Federal agencies.

“... It would create a new bureaucratic framework, comprising a U.S. Coordinator for International Cultural Property Protection ... [and] a Committee on International Cultural Property Protection ...”

Most importantly, the proposed legislation would direct the President to impose import restrictions on archaeological and ethnographic material unlawfully removed from Syria on or after March 15, 2011. Although the International Council on Museums (ICOM) published an “Emergency Red List of Syrian Cultural Objects at Risk” in September 2013, no formal import restrictions on Syrian objects are currently in force in the United States. Import restrictions are generally the result of bilateral agreements with foreign nations in accordance with the CPIA (the implementing legislation for U.S. participation in the 1970 UNESCO Convention), but the President has the authority to impose emergency sanctions

where a foreign nation does not have a recognized regime. President George W. Bush utilized that authority to enact the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 in response to the April 2003 ransacking of the Iraq Museum in Baghdad. The current bill would mandate President Obama to enact similar emergency import restrictions to prevent looted and smuggled Syrian antiquities from entering the U.S. It is not clear whether such objects are entering the country at this point, and if so, to what degree.

“Most importantly, the proposed legislation would direct the President to impose import restrictions on archaeological and ethnographic material unlawfully removed from Syria on or after March 15, 2011.”

Critics of the proposed legislation include the Association of Art Museum Directors (AAMD), a membership group of more than 200 of the largest art museums, and the Committee on Cultural Policy (CCP), a nonprofit edu-

cational organization that represents the views of collectors. On April 22, AAMD's President, Susan Taylor, wrote to the House Foreign Affairs Committee saying that while the organization “supports limited import restrictions on cultural property taken from Syria,” it doesn't support it “in the form suggested by the Bill,” ... which, AAMD says, “condemns cultural property to isolation in Syria where it can be looted or destroyed by terrorist groups like ISIS.” Moreover, the Bill's proposal to create a new committee and coordinator for cultural property “contravenes ... long-standing United States policy on the protection of cultural property ...” and would compete “with a committee and process established by Congress more than thirty years ago.”

The CCP's objections to the Bill (and also its predecessor bill in 2013) are similar to those of the AAMD. In an April 19th letter to Congressman Elliot Engel, CCP's President Robert Poster asserts that “HR 1493 as written is likely to make a bad situation even

worse,” as the “bill assumes that cultural property may be ‘saved’ by repatriating it back to unstable, war torn nations without conditions.” Too often, he says, “the worst destroyers of cultural property” are “the source nations' own rules.” Like AAMD, he, too, objects to the new bureaucracy, which bypasses the Cultural Property Advisory Committee set up under the CPIA for essentially the same purpose, and which will lack representation from members of the U.S. art market. In sum, CCP believes HR 1493 would both “fail to protect” the endangered objects it seeks to protect and also cause harm to “the American public and American institutions”.

As IFAR was at press, the House passed an amended version of the bill that was responsive in part to some of the noted criticisms. The amended bill, which has been referred to the Senate for consideration, would permit foreign owners of Syrian antiquities to request that their property be temporarily located in the United States for protection purposes.

— A.M.G. and S.F.

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LONG ISLAND CON MAN JOHN RE SENTENCED TO 5 YEARS FOR FRAUD THAT IFAR HELPED EXPOSE

LISA DUFFY-ZEBALLOS* AND SHARON FLESCHER**

With district court Judge P. Kevin Castel calling him a “facile liar” who planned a “9-year scheme” to defraud the public, East Hampton fraudster John Darren Re was sentenced on May 10 to five years in federal prison, starting immediately, and ordered to pay restitution in the amount of \$2,225,807 to his victims.¹ Re, aged 55 and dealing with “severe mental health issues” according to his court-appointed attorney, pled guilty in December 2014 to a scheme involving the sale of dozens of fake artworks purportedly by Jackson Pollock and Willem de Kooning. He claimed to have discovered them in the basement of deceased East Hampton resident, George Schulte. The sentencing — on Re’s birthday — marked the conclusion of a multi-year FBI investigation led by Special Agent Meridith Savona. It doesn’t, however, mark the end of the case. On May 18, Re filed a Notice of Appeal with the Second Circuit Court of Appeals.

As discussed in the last issue of *IFAR Journal*, the government Complaint relied in large part on a 120-page negative report (see below) written by IFAR (the International Foundation for Art Research) regarding 45 of the fake Pollocks, which Re later admitted selling with a concocted provenance.² Re has not admitted to having painted the

works, however, nor has he said who did, despite a direct question about that from the judge. He has only admitted that all the works were fake and that the story of finding them in Schulte’s basement was bogus.

“The government Complaint relied in large part on a 120-page negative report ... written by IFAR regarding 45 of the fake Pollocks.”

At the sentencing, Re claimed that he found the works (then he said it was his brother) in a storage unit in a New York warehouse, but he had no documents or details to back it up. One of his victims, listed in the Complaint as Collector 2, but who identified himself in court as John Szemansco, didn’t buy the story, telling the court that “Mr. Re knows well how important provenance is,” and if he had found the works in a warehouse, he would have the documents to prove it, and would have researched the finding. Calling Re “smart” and “very calculating,” Szemansco urged the judge to mete out a harsh sentence in order “to send a message” and show that there is “justice for people in the art world who are being victimized.” Re could have received up to 20 years in prison; the sentencing guidelines presented to the judge, however, recommended 37-46 months. But Judge Castel imposed 60 months as a warning, he said, to others who might contemplate a “get rich quick plan in selling fake art.”

In our previous *Journal* article, we included a brief account of IFAR’s involvement with the fake John Re “Pollocks” (no “de Koonings” were submitted to IFAR). Below, we provide a more detailed discussion

* Lisa Duffy-Zeballos, Ph.D., is the Art Research Director of IFAR.

** Sharon Flescher, Ph.D., is Executive Director of IFAR and Editor-in-Chief of the *IFAR Journal*.

¹ *United States v. John Re*, No. 14-cr-00550-PKC (S.D.N.Y. filed Aug. 18, 2014), appealed at No. 15-1629 (2nd Cir. Filed May 18, 2015).

² See Lisa Duffy-Zeballos and Sharon Flescher, “East Hampton Con Man Known to IFAR Pleads Guilty: John Re Admits Schulte Provenance was Concocted,” *IFAR Journal*, Vol. 15, nos. 3&4 (2014), pp. 3-5.

of IFAR's research on dozens of "Pollocks" from the so-called Schulte collection.

THE "POLLOCKS" IN THE BASEMENT

Although the Complaint mentioned a scheme starting in 2005, in fact, IFAR first encountered John Re and the "Schulte collection" in 2001, when a small dripped painting on paper signed and dated "Jackson Pollock 1948"

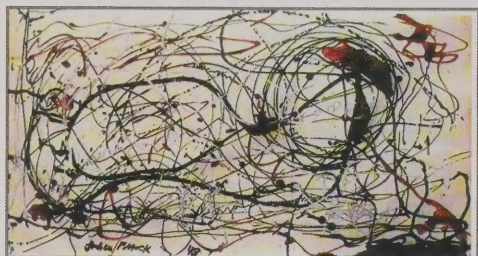


FIGURE 1. IFAR #01.05, painting on paper, 12 ½ x 21 ¾ in., submitted to IFAR in 2001. Photo: IFAR.

(FIG. 1) was submitted to our Authentication Research Service. The painting was said to have been found by Re, along with other ostensible Pollocks and de Koonings, while cleaning out the basement of the late

George Schulte (1922-1996), a woodworker, restorer and appraiser who had been a longtime resident of East Hampton. A notarized letter signed by Schulte's widow, Barbara, stated that her late husband had helped Pollock and de Kooning "set up their studios" and had received the works directly from

the artists, presumably in lieu of payment (FIG. 2).

While it is now known that the provenance was concocted, at the time that the work was submitted to IFAR it sounded "plausible," if unlikely. In the 1940s and 1950s East Hampton had a small year-round population, including Jackson Pollock and his wife Lee Krasner, who had moved there in 1945. Moreover,

Pollock was known to have exchanged artworks for services, although such transactions were rare: Daniel Miller received *Silver over Black, White, Yellow, and Red* as payment for a grocery bill, and, in 1950 attorney Gerard Weinstock accepted *Composition with Red Arc and Horses* in lieu of payment for drawing up Pollock's will. Pollock also gave fellow artist Helen Frankenthaler a small work on paper for her wedding. Nevertheless, such gifts and exchanges, always with known friends and associates, were to the best of our knowledge limited to one work of art. The discovery of a large group of undocumented Pollock paintings said to have been received for work performed, therefore, naturally raised suspicions, which deepened when we could find no evidence that either Pollock or Krasner knew Schulte. His name was not mentioned in the published literature or unpublished documentation on Pollock, and an examination of Pollock's cancelled checks revealed no payments to Schulte that might suggest business transactions between them. Nor could we find any reference to this particular painting in any of the published or unpublished documentation on Pollock.

"Re has not admitted to having painted the works, nor has he said who did."

More importantly, the painting itself was an unconvincing pastiche, lacking the vitality and compositional integrity of Pollock's 1948/1949 black and red works on paper, such as *Untitled 1948-49* in the Metropolitan Museum

(FIG. 3). Evidently unfamiliar with the material qualities of Pollock's works on paper, the painter of the IFAR work tried to mimic Pollock's effects using incorrect

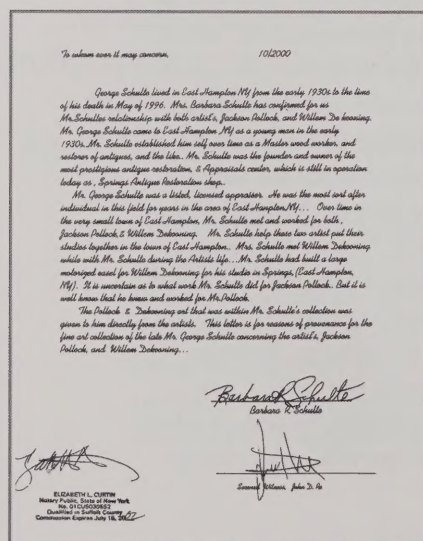


FIGURE 2. Affidavit signed by Barbara Schulte and John Re, submitted with IFAR #01.05. Photo: IFAR.



FIGURE 3. JACKSON POLLOCK, *Untitled*, 1948-49. Ink and enamel on paper, 22 ½ x 30 in. The Metropolitan Museum of Art, NY. © 2015 The Pollock-Krasner Foundation/ARS, NY.

methods. Thus, in an attempt to replicate the lines found in Pollock's dripped paintings on paper prepared with wet gesso, where the interaction of the enamel paint on the gesso produced a two-or three-part dripped line that is dense at the edges and translucent in the center, the faker used an ungesoed piece of paper and simply over-painted the dripped lines to make them darker at the edges.

“Judge Castel imposed 60 months as a warning, he said, to others who might contemplate a ‘get rich quick plan in selling fake art’.”

Furthermore, the work appeared intentionally aged. It had been executed on an old and damaged piece of paper, but, tellingly, while the edges of the paper support were abraded and worn, the paint drips *over* the frayed edges were not. Similarly, although there was a prominent vertical fold down the center of the page, which was present before the work was executed, as evidenced by the black paint that ran into the fractured paper fibers along the fold line and pooled in the creases, the paint *on top of the vertical fold* — a brittle powdery black paint highly susceptible to damage — was suspiciously intact.

For these reasons (and more), IFAR rejected the painting as a Pollock, noting in our report that the painting's provenance was unsubstantiated and highly problematic.

Shortly after we sent the owner our report, we learned that other purported Pollock and de Kooning works on paper from the so-called Schulte collection, some with an apparently identical crease down the center of the paper, were appearing on the art market and on eBay. Later, in 2008-2009, two other paintings bearing a Schulte provenance — one on paper and one on canvas — were submitted to us, and neither of them bore up as Pollocks either.

A COLOSSAL CACHE OF FAKES

The extent of the problem only became apparent in 2011, however, when IFAR was contacted regarding

45 purported Pollocks on canvas, fiberboard, and paper that a single owner had recently purchased from Re. Each work was submitted with a document signed by Re, but not by Barbara Schulte, identifying it as a work from the Schulte collection (FIG. 4). The images sent to us preliminarily showed a significant variation in quality among the paintings. If authentic, such a large group could have changed our understanding of Pollock's oeuvre; if inauthentic, we were dealing with an enormous fraud.

IFAR agreed to review the entire collection — in fact, we insisted on reviewing all or none — and stipulated that every work would be examined individually by us with Pollock specialists. We also insisted, as a precondition of our involvement, that we be allowed at our discretion to undertake forensic sampling and analysis of pigments, binders and other materials from a selected number of works.

We retraced and supplemented our earlier provenance research, this time succeeding in interviewing John Re himself, as well as a number of George Schulte's friends and family members. By telephone, Re informed us that he was a woodworker who had worked at the East Hampton antique restoration shop formerly owned by Schulte, whom he never met. Schulte's widow, Barbara, however, occasionally hired him for odd jobs. All of that was true. The rest has since been discredited, including Re's claim that in 2000, while cleaning out the Schultes' basement, he discovered approximately 65 paintings, drawings, and mixed media works by Pollock, as well as 30 drawings and sketchbooks by de Kooning. In fact, the works were never in the basement.

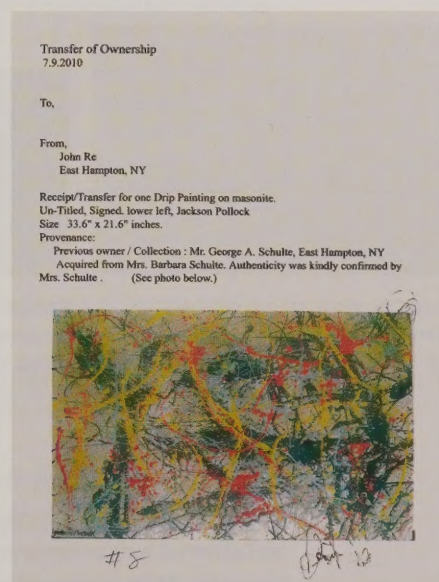


FIGURE 4. Transfer of Ownership form signed by John Re submitted with IFAR #11.08 in 2011. Photo: IFAR.



FIGURE 5. IFAR #11.40, painting on masonite, 25 ½ x 19 ½ in. One of a group of 45 works submitted to IFAR in 2011. Photo: IFAR.



FIGURE 6. IFAR #11.11, painting on canvas, 49 ½ x 37 in. One of a group of 45 works submitted to IFAR in 2011. Photo: IFAR.

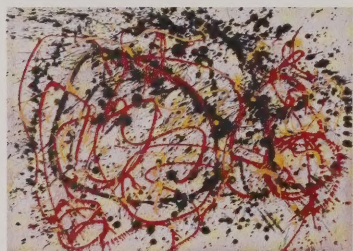


FIGURE 7. IFAR #11.17, painting on paper, 14 ½ x 20 in. One of a group of 45 works submitted to IFAR in 2011. Photo: IFAR.



FIGURE 8. IFAR #11.18, painting on paper mounted on cardboard, 13 ½ x 20 in. One of a group of 45 works submitted to IFAR in 2011. Photo: IFAR.

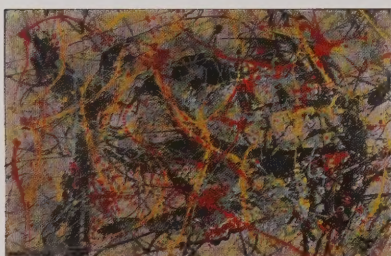


FIGURE 9. IFAR #11.08, painting on fiberboard, 21 ⅝ x 33 ⅝ in. One of a group of 45 works submitted to IFAR in 2011. Photo: IFAR.

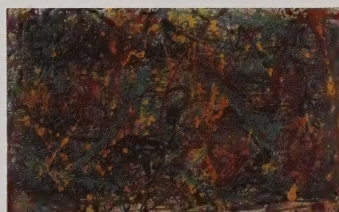


FIGURE 10. IFAR #11.09, painting on masonite, 14 x 23 in. One of a group of 45 works submitted to IFAR in 2011. Photo: IFAR.

Re also told IFAR that Barbara Schulte had authorized him to act as her agent in selling the works and had allowed him to remove the paintings from her basement. With her permission, he said, he signed Mrs. Schulte's name to some of the early affidavits he provided with the paintings, but when she later

objected, he began signing only his own name to the sale documents. Re added that there came a point when Barbara Schulte no longer wished to be involved, and sold him the rest of her collection. To what degree Barbara Schulte was complicit in the scheme or exploited is not fully clear. Her family told IFAR in court after Re's sentencing that they believe she was exploited and their good name damaged.

By the time of IFAR's investigation, Mrs. Schulte had been institutionalized for dementia, but none of the Schultes' friends, business associates, or relatives, including children and stepchildren whom we contacted, could recall ever seeing Abstract Expressionist-style paintings in the house. Nor could anyone recall Schulte claiming to have known Jackson Pollock or possess paintings by him.

As to the works themselves — most bearing "Pollock" signatures and some dates — not one was remotely credible when examined in person, although few had appeared plausible when seen in photographs. The paintings displayed a wearying homogeneity in palette, technique and physical properties uncharacteristic of Pollock. The large drip-style paintings on canvas and fiberboard, for example, shared a basic palette of red, mustard yellow, teal, and matte black. All of the works were unstretched and unframed, and few exhibited the expected tacking holes, stretcher marks or other indicators that they had ever been mounted or hung. Particularly troubling, a large number of paintings had been brushed with a gray wash or a dark brown liquid coating, which served no purpose but to dull the colors and make the paintings appear old.

Stylistically, the 45 paintings fell into three distinct Pollockesque subsets: early 1940s-style figural or brushed and dripped abstract compositions (**FIGS. 5 and 6**); 1948-1949-style dripped and spattered paintings on paper (**FIGS. 7 and 8**); and large-scale classic dripped late 1947-1952 paintings on canvas and fiberboard (**FIGS. 9 and 10**).

The least convincing were the early figurative compositions, which included an amateurish take on Pollock's 1943 *Guardians of the Secret* (**FIG. 11**). The motifs in the central panel of the IFAR painting

appeared to have been influenced by the catalogue of the Museum of Modern Art's 1999 Pollock retrospective, in which it was first observed that the central frieze in *Guardians* included inverted figures (FIG. 12). The faker "corrected" the orientation of Pollock's figures, and added other elements, such as the eye-in-a-triangle motif and a Picassoesque profile of a head found in other Pollock paintings of that period, along with motifs that do not factor into any of Pollock's works.

The works on paper, equally problematic, had all been intentionally distressed prior to painting. Like the work reviewed by IFAR in 2001, although missing the vertical fold, the tattered edges of the papers were frayed, yet the paint that had dripped over the edges was suspiciously intact. Most of the paper supports had been brushed with a dry pigment before and sometimes after they were painted, apparently to simulate the grime and discoloration that occurs naturally over time.



FIGURE 11. IFAR #11.12, painting on canvas, 28 x 46 $\frac{3}{4}$ in. One of a group of 45 works submitted to IFAR in 2011. Photo: IFAR.



FIGURE 12. JACKSON POLLOCK, *Guardians of the Secret*, 1943. Oil on canvas, 48 $\frac{3}{8}$ x 6 ft. 3 $\frac{3}{8}$ in. San Francisco Museum of Modern Art. © 2015 The Pollock-Krasner Foundation/ARS, NY.

Stylistically, the paintings on paper conflated incompatible elements of Pollock's late 1940s-style works on paper into a single composition. Thus, while the color palettes evoked Pollock's *black and red* dripped paintings of 1948, their composition and linearity simulated his 1948-1949 *black and white* paintings on paper.

The largest subgroup comprised paintings on canvas and masonite executed in Pollock's classic dripped style. In one of the better works in this group (FIG. 9), the underlying web of thick black lines overlaid with colored drips was superficially consistent with Pollock's layering, but its dripped black armature was too heavily described. Moreover, the yellow figure-like image in the center is unlike any of Pollock's figural drips. This painting, too, had been artificially aged. A heavy brown veneer was brushed selectively over areas of white in an attempt to "knock back" the brightness of the white paint.

In sum, not one of the 45 paintings was stylistically convincing as an authentic Pollock.

FORENSIC ANALYSIS

Nor were the materials correct. Fifty-three samples of paint and primer were taken from thirteen paintings and analyzed using Fourier transform infrared microspectrometry (FTIR) and dispersive confocal Raman microscopy. *All but one of the works contained binders or pigments that were either anomalous or anachronistic for Jackson Pollock.*³

Anachronistic binding media, that is, materials developed after Pollock's death in 1956 or after the date ascribed to the work in question, were found in six of the 13 paintings tested. Two of the six paintings contained ASA (acrylic-styrene-acrylonitrile terpolymer), which was commercially available only since about 1970.⁴ Similarly, the silver-colored paint

³ The binding media could not be identified in samples taken from one of the paintings tested.

⁴ Harvard University Art Museums, *Technical Study of Three Paintings Attributed to Jackson Pollock*, 2007, <http://www.artmuseums.harvard.edu/home/HUAMreport012907pdf>.

(FIG. 13) found in three of the paintings tested was not the aluminum paint preferred by Pollock, but



FIGURE 13. Detail of silver paint (oxide-coated mica pigment) taken from IFAR #11.36. One of a group of 45 works submitted to IFAR in 2011. Photo: IFAR.

a titanium dioxide-coated mica interference pigment. This non-metallic pigment, which uses flakes of mica to imitate the luster of metallic paints, was introduced in 1961, five years after Pollock's death.⁵

Also damning was the presence of

anomalous paint binders — materials available during Pollock's lifetime but not thus far found in any of his works — in almost all of the paintings tested. Ten of the thirteen paintings contained acrylic binders, but to date *no acrylic paint of any kind* has been found in a documented Pollock.⁶

In fact, only two types of acrylic paint were even available in Pollock's lifetime (although not known to have been used by him): the acrylic resin paint Magna, which was developed in 1949 by Leonard Bocour, and the aqueous acrylic emulsion paint Rhoplex AC-33, which was marketed for artists as Liquitex starting in 1954 or 1955.

Testing also revealed the presence of polyvinyl acetate (PVA) emulsion paints in five of the paintings tested. Typically used as interior house paints, PVA emulsion paints became commercially available in the 1940s, and were available during Pollock's lifetime. Their use was not widespread among American artists, however, who preferred alkyd house paints,⁷ and PVA emulsion paints are not known to have been found in authentic works by Pollock.

Not only did the overwhelming majority of the works we sampled contain problematic materials, none of the paints tested contained materials more typically found in Pollock, such as oil, alkyd, or nitrocellulose paints.⁸ The testing results from this representative sample of works naturally cast doubts on the authenticity of all of the other paintings in the group.

The forensic results, together with the stylistic incongruities, poor quality, unsubstantiated and false provenance, and other evidence of fakery led IFAR to reject all 45 paintings. As fakes, these works were not especially sophisticated. Irrespective of their provenance, the Schulte "Pollocks" would probably not have fooled any specialist on close examination.

We concluded that the group represented a "deliberate and pervasive attempt to deceive" and, if circulated, posed a significant threat to the art world's understanding of Jackson Pollock.

As we noted in our earlier article, John Re later contacted IFAR claiming that the paintings we reviewed were not from the Schulte collection but from the "Taylor Robinson collection," and he insisted that IFAR retract its report in light of this new information. We did not; nor would it have mattered, since the rejection was based on far more than provenance.

THE CRIMINAL CASE

In July 2014 John Re was indicted on suspicion of selling over 60 known fakes to a handful of

"All but one of the works contained binders or pigments that were either anomalous or anachronistic for Jackson Pollock."

Even if Pollock had used acrylic paints, their use would be confined to works executed after 1949, but since several of the paintings that IFAR tested dated stylistically to before 1949, the presence of acrylics in these works was not only anomalous for Pollock, but anachronistic as well.

⁵ James Martin, "What Materials Tell Us about the Age and Attribution of the Matter Paintings" *IFAR Journal*, Vol. 10, no. 1 (2008), pp. 30-32. See also Howard Linton, *Nacreous Pigment Compositions*, U.S. Patent 3,087,828, assigned to E.I. du Pont de Nemours & Co., Wilmington, DE (filed 28 June 1961, issued April 30, 1963).

⁶ Martin, p. 33.

⁷ Tom Learner, "A Review of Synthetic Binding Media in Twentieth-century Paints," *The Conservator*, No. 24, (2000), pp. 96-103.

⁸ Oil binders were identified in samples of primer from two works, most likely from a commercially pre-primed canvas.

unsuspecting buyers, netting him an estimated \$2.5 million.⁹ Although Re initially claimed that he sold the paintings as “attributed to” Pollock and de Kooning, he recanted when confronted with the eBay listings and his own signed statements to the contrary. As part of his December plea agreement, Re admitted that he had fabricated the Schulte provenance. At the sentencing, however, which was attended by several of Re’s victims as well as members of the Schulte family, Re admitted that the works were all fake, but insisted he had believed they were authentic. According to Re, the Vered Gallery in East Hampton, which eventually purchased and marketed 22 of the de Koonings on paper, but was not charged in connection with the fraud,¹⁰ had told him that the works *could* be authentic, and he chose to believe that he had “hit the jackpot.” Re said that he too “felt like a victim.”

Re’s innocence was vigorously challenged by both the prosecutor and Re’s victims, several of whom had submitted impact letters to the court. John Szemansco, the owner of the 45 paintings investigated by IFAR, told the court his involvement with Re had cost him 32 years of his retirement savings and that he was fighting off foreclosure on his house. Referring to Re’s previous convictions, Szemansco warned the court that “If [Re] gets back on the street, he’s going to do it again, maybe not with art, but with something else.” Assistant U.S. Attorney Andrew Adams focused on the injury caused to the Schulte family. He reminded the court how Re had preyed on and apparently manipulated an elderly woman, noting that Re’s decade long “exploitation of Barbara Schulte speaks to the viciousness of the crime.”

Describing Re as a “con artist and a swindler” who “excels in the art of manipulation,” Judge Castel sentenced him to five years in federal prison with an additional three years of monitored supervision. Re was also ordered to pay \$2,225,807 in restitution to his victims and forfeit *Deep Quest*, a submarine-like movie prop modeled after the naval submarine

“FBI Special Agent Savona told IFAR that ... there were at least 150 Pollock and de Kooning works with a Schulte provenance marketed by John Re. Some are in collections as yet unknown. ‘Owners should be on notice,’ Savona cautions, that ‘any Pollock or de Kooning that has the Schulte provenance is fake and cannot be legally sold as authentic.’ Anyone owning a work with a Schulte provenance may contact Agent Savona ...”

of that name (which Re’s attorney asked be applied to the restitution). In recognition of his financial difficulties, the judge waived the recommended fine, but did charge Re \$100 mandatory special assessment.

John Re’s legal troubles are not over. In July, he is scheduled to be sentenced in New York State Supreme Court for felony state income tax fraud, a charge to which he has already pleaded guilty.¹¹ That investigation — also over a period of years — was led by Brett Carlson in the Suffolk County District Attorney’s Office. Re also faces at least one civil complaint in California relating to the sale of 21 fraudulent artworks, three of which were purported “Pollocks.”¹²

Meanwhile, FBI Special Agent Savona told IFAR that although only approximately 74 works were mentioned in the court documents, there were at least 150 Pollock and de Kooning works with a Schulte provenance marketed by John Re. Some are in collections as yet unknown. “Owners should be on notice,” Savona cautions, that “any Pollock or de Kooning that has the Schulte provenance is fake and cannot be legally sold as authentic.” Anyone owning a work with a Schulte provenance may contact Agent Savona at the FBI, New York Office at (212) 384-5000.

• • •

⁹ Press release U.S Attorney’s Office, SDNY, December 1, 2014.

¹⁰ The gallery was sued by one of the purchasers, however, and the case was settled out of court. *Janis v. Vered Gallery, et al.* No. 4601994 (N.Y. Sup. Ct. filed June 25, 2004).

¹¹ *People of the State of New York v. John Re*, No. SCI-00297-2015 (Suffolk Cty. filed June 10, 2014).

¹² *Anders Karlsson v. John Leo Mangan, III, et al.*, No. 14-cv-4514-R-JPR (C.D.Cal. filed June 11, 2015).

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VIENNA 1900: PORTRAITURE, PERCEPTION, RECEPTION, AND RESTITUTION

An IFAR Evening — October 10, 2014



EDITOR'S NOTE:

It is not often that IFAR hosts a Nobel Laureate, but on October 6, 2014, Professor Eric Kandel, Nobel Prize winner in 2000, along with gallerist Jane Kallir, author of a catalogue raisonné on Egon Schiele, and Professor Alessandra Comini, a scholar of Viennese Expressionism, who curated an exhibition on “Egon Schiele: Portraits” opening that very week at the Neue Galerie, spoke to a sold-out auditorium at Scandinavia House in New York. The IFAR program focused on portraiture produced in the exceptionally fertile period of early 20th century Vienna and on the way that contemporaneous studies of the mind influenced the artists and the viewers. The program also touched on how the art has appreciated over time and has factored into many Holocaust-era art restitution claims. The talks were followed by a Q&A and reception. Below is an edited version of the three talks and Q&A. A videotape can be found on IFAR’s website: www.ifar.org. IFAR would like to acknowledge ArtBanc for its support of this special *IFAR Evening*.

SPEAKERS IN SEQUENCE:

ALESSANDRA COMINI

University Distinguished Professor of Art History Emerita,
Southern Methodist University;
Curator, “Egon Schiele: Portraits,” Neue Galerie

ERIC R. KANDEL

Nobel Laureate; University Professor, Columbia University;
Director, Kavli Institute for Brain Science and The Mortimer
B. Zuckerman Mind Brain Behavior Institute;
Author, *In Search of Memory* and *The Age of Insight*.

JANE KALLIR

Co-Director, Galerie St. Etienne;
Author, *Egon Schiele: The Complete Works*

VIENNESE PORTRAITURE IN THE AGE OF ANGST

ALESSANDRA COMINI*



A phenomenon was taking shape in the imperial and royal city of Vienna during the opening years of the 20th century. A startling redefinition of portraiture was emerging during what can be characterized as the Age of Angst before World War I. The three posters in **FIGURE 1** say it all, but public posters can exaggerate.

When we compare the two oil portraits in **FIGURE 2**, one of them obviously painted before 1900 and the other definitely after 1900, the von Amerling portrait on the left looks realistic and informative. It conveys the message that the mature sitter in her elegant clothing is affluent, alert, and at one with her surroundings. The portrait looks



FIGURES 1A-C. Three Viennese Expressionist Posters. **A (left):** MAX OPPENHEIMER. *Moderne Galerie Theatiner-Maffeistr.*, 1911. Museum of Modern Art, NY. **B (center):** OSKAR KOKOSCHKA. *Pietà (Poster for Murder, Hope of Women)*, 1909. Museum of Modern Art, NY. © 2015 Foundation Oskar Kokoschka/ARS, NY/ProLitteris. **C (right):** EGON SCHIELE. *Self-Portrait as St. Sebastian*, 1914-15. Historisches Museum der Stadt Wien.

* Alessandra Comini is the University Distinguished Professor of Art History Emerita, Southern Methodist University. She was Curator of "Egon Schiele: Portraits" at the Neue Galerie, October 9, 2014–April 20, 2015.



FIGURES 2A and B. A (left): FRIEDRICH VON AMERLING. *Countess Nákó*, 1855. Oil on canvas, 127 x 106 cm. Szépművészeti Múzeum, Budapest. B (right): OSKAR KOKOSCHKA. *Portrait of Lotte Franzos*, 1909. Oil on canvas, 114.9 x 79.4 cm. Phillips Collection, Washington, DC. © 2015 Foundation Oskar Kokoschka/ARS, NY/ProLitteris.

and feels complete. We could not say the same for the Oskar Kokoschka portrait on the right, which, at first glance, looks unfinished, without surround or environment. But, in fact, Kokoschka deemed the portrait finished by signing it with his initials “OK” on the lower right. In his portrait, the stiffly upright young sitter looks awkward; her gaze focused inward, her body surrounded by two colored glows, the inner one blue, the outer one yellow. But there is no background, not even the chair in which the girl sits. The most noticeable feature is the sitter’s tense hands with stiffly spread fingers. While the von Amerling portrait on the left is environmental, calm, the Kokoschka is existential, focused on the sitter’s state of mind and her apparent inner anxiety or sadness.

Nineteenth-century portraiture in Vienna, whether lavishly imperial, sentimentally bourgeois, or commandingly military, used environment to further define its subject. But at the start of the 20th century in Vienna, portraiture was being daringly redefined, not by one artist but by several, all from the new generation that came to be called the Expressionist painters. Four of the most important are Richard Gerstl, Egon Schiele, Max Oppenheimer, and Oskar Kokoschka (**FIGS. 3A-D**). These driven, rebellious artists consistently placed their subjects within empty space. In Gerstl’s self-portrait (**FIG. 3A**), only the sparsely indicated setting suggests any sort of background. These are unsettling visions. The sitters exude inner turmoil; we sense psyches under stress.

“At the start of the 20th century in Vienna, portraiture was being daringly redefined, not by one artist but by several, all from the new generation that came to be called the Expressionist painters.”



FIGURES 3A-D. A (left): RICHARD GERSTL. *Self-Portrait with Blue-Green Background*, c. 1907. Oil on cardboard, 101 x 71.45 cm. Tiroler Landesmuseum Ferdinandeum, Innsbruck, Austria. B (center): EGON SCHIELE. *Portrait of the Publisher Eduard Kosmack*, 1910. Oil on canvas, 100 x 100 cm. Österreichische Galerie Belvedere, Vienna. C (center): MAX OPPENHEIMER. *Writer Heinrich Mann*, brother of Thomas, 1911. Oil on canvas, 100 x 91.4 cm. Ph: Erich Lessing/Art Resource, NY. D (right): OSKAR KOKOSCHKA. *Peter Altenberg*, 1909. Oil on canvas, 76 x 71 cm. Priv. coll., NY. © 2015 Foundation Oskar Kokoschka/ARS, NY/ProLitteris.

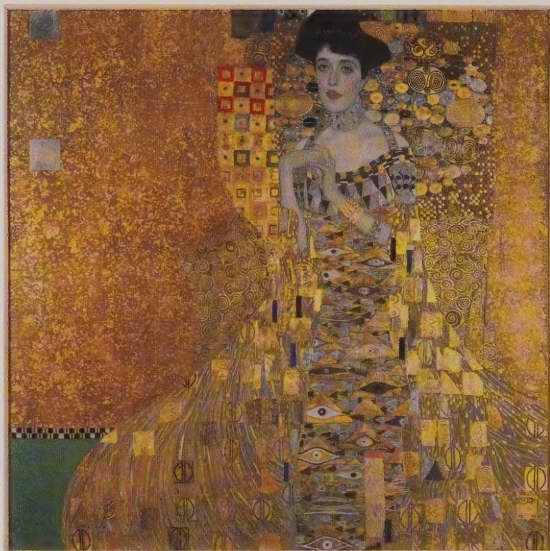


FIGURE 4. GUSTAV KLIMT. *Adele Bloch-Bauer I*, 1907. Oil, silver, and gold on canvas, 55 1/8 x 55 1/8 in. Coll. Neue Galerie, New York.

FROM KLIMT'S *HORROR VACUI* TO SCHIELE'S EXISTENTIAL PORTRAITURE

How amazing that at the same time these frozen, angstful images were being created, an altogether different kind of portraiture was being articulated by Vienna's grand master of Art Nouveau, Gustav Klimt. His now world-famous 1907 depiction of Adele Bloch-Bauer outfitted in gold presents the subject in a Byzantine cocoon of decoration within a room-defining backdrop of green, black, and gold (FIG. 4). Adele appears at one with her environment. Actually, there was one hitch. Adele had a finger deformity of her right hand, Dupuytren's contracture, and she went out of her way to conceal this defect, as she does in the portrait and in this photograph (FIG. 5). Furthermore, according to Viennese gossip, since it took Klimt over five years to complete the portrait, involving numerous visits by Adele to his studio far from the center of town, it was



FIGURES 5A and B. A (left): Photograph of Adele Bloch-Bauer, c. 1910. **B (right):** Detail of *Adele Bloch-Bauer I*. Ph: Neue Galerie.

rumored that they were carrying on an affair. The fact that Adele's husband was 17 years older than she and that they were childless played into this intriguing assumption. Notice the erotic discourse going on in Adele's golden gown with its symbols of erect rectangles, ovular eggs, and Egyptian eyes. So, although not qualifying as angst, there is a bit more going on in the Adele portrait than Klimt's mesmerizing, decorative fill at first allows us to perceive.

In other words, although Klimt's style differs from the new Expressionist portraiture, tension exudes as the artist's expressive *horror vacui* prevails. That *horror vacui* is one of the notable differences



FIGURES 6A and B. A (left): GUSTAV KLIMT. *Baby (Cradle)*, 1917/1918. Oil on canvas, 110.9 x 110.4 cm. National Gallery of Art, Washington, DC. **B (right): EGON SCHIELE.** *Newborn Baby*, 1910. Watercolor and charcoal on paper, 46 x 32 cm. Priv. coll., courtesy Galerie St. Etienne, New York.



FIGURES 7A and B. A (left): GUSTAV KLIMT. *Portrait of Friederike Maria Beer*, 1916. Oil on canvas, 168 x 130 cm. Tel Aviv Museum of Art, Mizne-Blumental Coll. B (right): EGON SCHIELE. *Portrait of Friederike Maria Beer*, 1914. Oil on canvas, 190 x 120.5 cm. Priv. coll. Photos: Erich Lessing/Art Resource, NY.

between Klimt and the Expressionists, evident when comparing the depiction of a baby by Klimt with one by Schiele (**FIGS. 6A and B**). In Klimt's unfinished painting, we see one hardly visible baby practically drowning in its environment of agitated swaddling clothes, while in Schiele's painting, we see a baby twice naked, a little newborn lacking both clothing and environment.

“We might legitimately ask, however, whose psyche, the sitter’s or the artist’s?”

What if we compare two portraits of a person who was portrayed by both Klimt and Schiele? (**FIG. 7**) Fräulein Friederike Beer, daughter of the owner of two Viennese nightclubs and recently returned from a trip around the world, was a devoted collector of Wiener Werkstätte clothing and furniture. Klimt painted her in front of a huge screen of ferociously fighting oriental warriors, all mellifluous action, while she stands stiffly passive in her jacket and pantaloons, almost overwhelmed by her vibrant surround. When I interviewed Fritz, as she liked to be called, in New York 51 years ago, I asked her what she said to Klimt when she went to him for

her portrait. She replied, “When I went to Klimt, I asked him if I could, had I more courage, wear my jacket with the fur inside and the beautiful Wiener Werkstätte lining outside. And so I did for the portrait.” She was very proud that she was showing off her Wiener Werkstätte lining.

Schiele's portrait of her differs dramatically from Klimt's. He showed Fritz upright, the signature at lower left enforcing a vertical reading. Her knees and arms are bent, with plunging bare feet, flailing arms, and grasping fingers, and oval head turned toward us in a fixed stare. Her zigzag body plummets through space. Schiele has stripped Fritz of any explanatory environ-

ment — even the mattress on which she was lying — choosing instead to jettison her into an existential angst-filled void. We are moving from Klimt's environmental portrayal to Schiele's existential portraiture, from placid facade to angstful psyche. We might legitimately ask, however, whose psyche, the sitter's or the artist's? And why the sense of pathos?

VIENNA CIRCA 1900

Chronologically, Schiele's portrait of Friederike, done in 1914, precedes Klimt's, painted in 1916. Thus, two styles, the ugly and the exquisite, were occurring at the same time in Vienna. Expressionism was replacing what appeared to these new artists as the old-fashioned, beautiful style of Klimt. In the riveting posters of **FIGURE 1**, Oppenheimer, Kokoschka, and Schiele are dramatically publicizing the ugly truth of their angst with wounds to the chest, flaying of the flesh, and the martyrdom of St. Sebastian. But why was portraiture so drastically redefined? The answer lies in the location and the time — the opening years of the 20th century. The Austro-Hungarian Empire, second largest nation in Europe after Russia, reached from the Austrian Alps and part of Italy in the west to Russia in the east and far down into the Balkans to the south. This

geographical spread created a multi-ethnic simmering cauldron of at least ten different nationalities: Austrian Germans, Italians, Hungarians, Czechs, Slovaks, Galicians, Poles, Romanians, Croats, and Bosnians. Their smoldering tensions came to a boil on June 29, 1914 in Sarajevo, when a Serbian nationalist fired point blank at the Austrian heir to the throne, Franz Ferdinand, and his wife Sophie. These “shots heard ‘round the world” precipitated World War I, with its four long years of trench warfare. No wonder the period was angstful.

Ruling over this impossible ethnic mix was the intractable Kaiser Franz Josef, who hated change — no telephones in *his* palace — and who had been on the throne since 1848. He would rule 68 years in all. He kept things in check with tradition, ritual, and facade. Every year he attended an annual eight-hour-long parade on the Ringstrasse, and every year people from all over Austria-Hungary came to see whether their elderly emperor would finally show signs of weakness. Although a rug was put out for him to stand on during the parade, every year he refused to be more comfortable than his paraders or spectators. This speaks volumes about the Vienna

of 1900. And the city, birthplace of the waltz, was enchanted and reassured by its own architectural facade — the famous Ringstrasse with its parliament building, its Votivkirche, its Burgtheater, its opera house, its splendid public and private buildings. How magnificent; how great was the Austro-Hungarian ship of state; and how stalwart its anchor, Vienna!

But not everyone thought this way. Karl Kraus, founder of the satirical magazine *The Torch*, said this of Vienna at the turn of the century: “an

isolation cell in which one is allowed to scream.”¹ Young Egon Schiele agreed in his *Self Portrait, Grimacing* of 1910 (FIG. 8).

FROM FACADE TO PSYCHE

Surely, Edvard Munch’s *Scream* was an artistic precedent for the Expressionists. But so was an 18th century precedent much closer to home in Vienna:

Franz Xaver Messerschmidt’s extraordinary so-called Character Heads in the throes of extreme emotion (FIG. 9). The Austrian sculptor devised a series of pinches to his lower right rib and then observed the resulting facial expressions in a mirror. Using himself as a template, he intended to represent what he called the 64 canonical grimaces of the human face. What a precedent for the Expressionist artists! Gerstl, Schiele, Oppenheimer, and Kokoschka, however, were intent on penetrating beyond physical appearances and grimaces. They were in search of the soul, a soul too often in distress.

Why this urge to go from facade to psyche, from the environmental to the existential? Why this desire to create what hostile critics called “pathological portraiture”? In partial explanation, let us return to the elegant world of Vienna and Klimt and remind ourselves of earlier pioneers of sci-

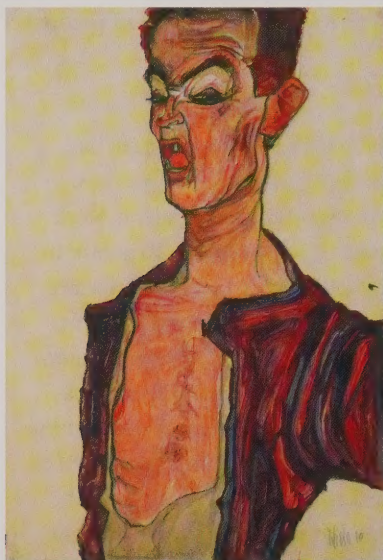


FIGURE 8. EGON SCHIELE. *Grimacing Man (Self-Portrait)*, 1910. Gouache, watercolor, and charcoal, 44 x 27.8 cm. Leopold Museum, Vienna. Ph: Art Resource, NY.

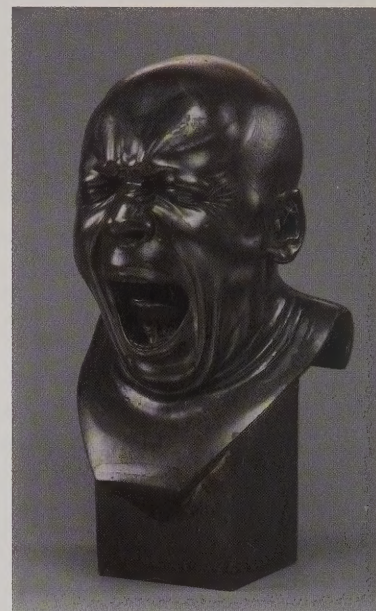


FIGURE 9. FRANZ XAVER MESSERSCHMIDT. *The Yawner*, c. 1771-83. Character Head. Lead. Ht: 43 cm. Szépművészeti Múzeum, Budapest. 1770. Ph: Jozsa Denes. Ph: © The Museum of Fine Arts, Budapest/Scala/Art Resource, NY.

¹ Karl Kraus, Ed. “Österreich: Isolierzelle, in der man schreiendarf,” *Die Fackel*, Vol. X, no. 251-52, 28 April 1908, p. 35.

ence and literature who had attempted to penetrate beyond appearance and look within.

“Gerstl, Schiele, Oppenheimer, and Kokoschka, however, were intent on penetrating beyond physical appearances and grimaces. They were in search of a soul, a soul too often in distress.”

First and foremost is Carl von Rokitansky, the renowned professor of pathological anatomy at the Medical School at the University of Vienna for some 45 years, from the 1830s to the 1870s. He is said to have supervised 70,000 *in situ* autopsies, personally performing over 30,000 of them. This was, literally, looking within. Second is Ernst Mach with his famous and influential publication of 1897, *The Analysis of Sensations, and the Relation of the Physical to the Psychical*. In this frequently reprinted and translated book, Mach, after whom the Mach number in fluid mechanics is named, asserted that the material world is but “a complex of sensations.”²

What interested the Expressionist artists was, of course, the relation of the physical, which they *could* capture, to the psychical, which they attempted to reveal. And, of course, we cannot neglect Sigmund Freud and his 1899 *The Interpretation of Dreams*, dated by his savvy publisher as 1900 to coincide with the beginning of a new century. The at-first notorious book offered a theory of the unconscious in which a symbolism of dreams was interpreted to be latent sexual context, a book that few read but about which everyone in Vienna had a vocal opinion.

Sharp-tongued Karl Kraus opined, “Psychoanalysis is the disease for which it purports to be the cure.”³ In a reverse parallel, the Expressionist art-

ists, especially Schiele, began with what they saw as overt sexual forces unleashed in the world and then attempted to embody them as the content of agonized self-portraiture. While the cult of Eros and Pathos was being addressed by Vienna’s uneasy Expressionist painters, the city’s writers plumbed people’s anxieties in public. Thus, an awesome parade of psychologically insightful, sex-obsessed literary works began to emerge. Among the most significant was physician Arthur Schnitzler’s 1897 play *Reigen* (*La Ronde*), an ironic examination of ten sexual encounters at ten different social levels of society. Also important was Robert Musil’s 1906 novel of sadism and adolescent awakening at a military boarding school, *The Confusions of Young Törless*. In music, Arnold Schoenberg’s hallucinatory monodrama *Expectation* (*Erwartung*) of 1909 conveyed the turbulent sea of emotions experienced by a woman searching for her unfaithful lover, over whose corpse she stumbles. And in architecture, Adolf Loos pronounced “ornament as crime.”⁴ In 1910 his radically stripped down edifice accusingly faced the emperor’s baroquely flowing entrance to his Hofburg Palace (FIGS. 10A and B). As the emperor could not stand the sight of Adolf Loos’ naked building, he never again entered the palace from there.

The new aim of art, according to Karl Kraus, was not *was wir bringen* (what we bring) but *was wir umbringen* (what we destroy). A savage analysis began. Ornament and facade were attacked by the new delineators of portraiture. The pursuit of essence, the phenomenon of the self — these became the subject matter of painting. A violently subjective view of reality was born, and a new and jarring stylistic vocabulary was fashioned. This entailed not only the passage from the facade to



FIGURES 10A and B. A (top): The Looshaus, opposite the Hofburg Palace. **B (bottom):** The entrance to the Hofburg Palace.

² Ernst Mach. *The Analysis of Sensations and the Relation of the Physical to the Psychical*, p. 363. Originally published in 1886. Trans. C. M. Williams. Ed. Sydney Waterlow. Chicago & London: Open Court Publishing Company, 1914.

³ Karl Kraus, “Psychoanalyse ist jene Geisteskrankheit, für deren Therapie sie sich hält.” *Die Fackel*, Vol XV, no. 376-77, 30 May 1913, p. 21.

⁴ Adolf Loos. Essay written in 1908 and delivered and published in 1910 as “Ornament and Crime.” Published in *Ornament and Crime: Selected Essays*, pp. 167-76. Trans. Adolf Opel. Riverside, CA: Ariadne Press, 1998.

the psyche, but also a transition from the rational to the irrational and from *schein* (appearance) to *sein* (being). This is what so radically distinguishes Schiele's plummeting portrait of Fritz from that of his mentor, the already old-fashioned, literal Klimt with his *horror vacui*. Fritz herself preferred Klimt's grounded portrayal to Schiele's statement of cascading anxiety. She told me that when she brought Schiele's portrait home, the maid said, "Oh, you look as though you lie in your tomb." So she hung the work from the ceiling, as Schiele suggested.

PORTRAITURE REDEFINED

Richard Gerstl

Let us examine briefly the results of the Expressionist way of peering into the soul. We are already familiar with Richard Gerstl's clothed self-portrait, in which he strikes a defiant pose with hands on hips (FIG. 3A), but FIGURE 11 shows a totally naked self-portrait done in 1908. Standing before his easel and facing us, one hand on his hip, Gerstl holds a paint brush in the other, pronouncing his identity: "I paint, therefore, I am." Equally important to him is "I am a man with sexual needs and desires." If we know his biography, we know toward whom these desires are addressed. The composer Arnold

Schoenberg, a dedicated amateur painter, asked Gerstl to give him art lessons. When Gerstl met Schoenberg's wife Mathilde, they fell instantly in love and ran off together for a few passionate weeks until Mathilde was talked into returning home to Arnold and their two children. Although the Schoenbergs made up, the affair had a devastating effect on the 25-year-old Gerstl. He made several stark, intensely staring self-images after the affair in 1908. Entering his studio on the night of November 4, he set fire to all

of his letters and papers and then hanged himself in front of his studio mirror, while at the same time plunging a knife into his breast. A horrifying autoscapy into a damaged psyche.

Oskar Kokoschka

Oskar Kokoschka's pathological portraiture was the talk of the town. He had powerful friends like Klimt and the architect Adolf Loos, depicted here with gnarled fingers tightly knit together, so different from the quiet joining of fingers shown in photographs (FIG. 12).

The artist's animated brushstroke provides an undefined but stormy environment and broadcasts nervous tension, tension perhaps aggravated by the architect's lifelong battle with syphilis. Kokoschka lived to be 93. But only in his early portraits, created in the crucible of Vienna, did he use facial expression, hand language, and raging surround as effectively as in this riveting portrait of Rudolf Blümner (FIG. 13). The artist was not shy about depicting himself, in his earlier Viennese years, usually in a painterly vacuum and with prominent hand gestures.

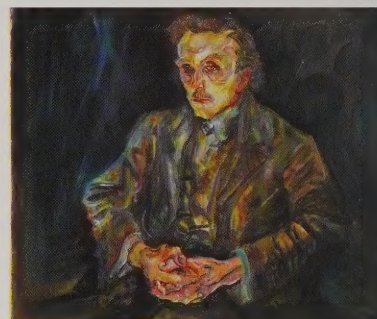


FIGURE 12. OSKAR KOKOSCHKA. *The Viennese Architect Adolf Loos*, 1909. Oil on canvas, 74 x 91 cm. Nationalgalerie, Staatliche Museen, Berlin, Germany. © 2015 Foundation Oskar Kokoschka/ ARS, NY/ProLitteris.

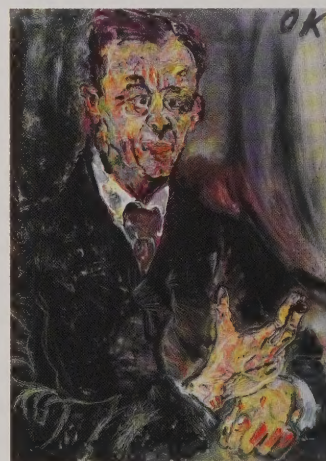


FIGURE 13. OSKAR KOKOSCHKA. *Rudolf Blümner*, 1910. Oil on canvas, 80 x 57.5 cm. Priv. coll. Ph: courtesy, Neue Galerie NY/Art Resource, NY. © 2015 Foundation Oskar Kokoschka/ ARS, NY/ProLitteris.

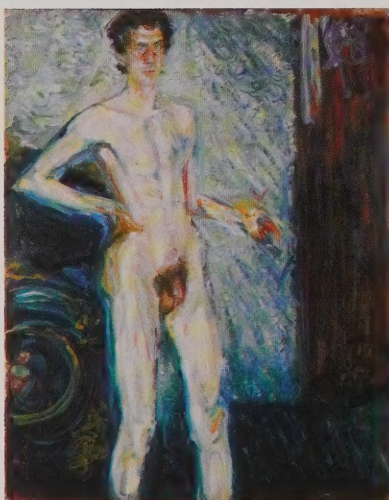


FIGURE 11. RICHARD GERSTL. *Nude Self-Portrait with Palette*, 1908. Oil on canvas, 139.3 x 100 cm. Leopold Museum, Vienna.

Max Oppenheimer

Like Gerstl, Max Oppenheimer was Jewish, which, in his case, meant that he fled Hitler and ended up in New York, where he died at the age of 69 in 1954. Speaking of Hitler, it is mind-blowing to realize that he was working as an amateur artist in Vienna during the years 1908 to 1913 (FIG. 14). His own view of the Vienna Opera House is not bad, but it is simply copied from a postcard. Hitler would later pronounce Oppenheimer's Expressionist imagery *degenerate*. Although, at the time, Oppenheimer's imagery was considered merely a pale echo of Kokoschka, if we look at his *Portrait of Heinrich Mann*, all a'shudder with an astral body glow, scuttling body contours, and perturbed painterly background, that criticism seems harsh (FIG. 15).



FIGURE 14. ADOLF HITLER. *Vienna State Opera House*, 1928. Watercolor.

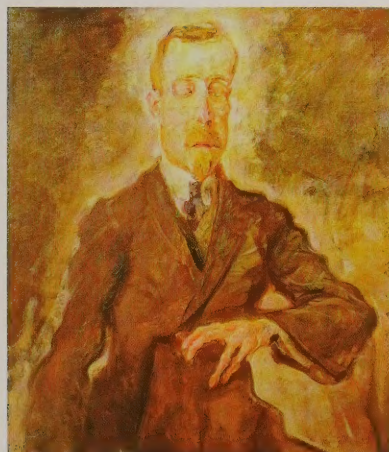


FIGURE 15. MAX OPPENHEIMER. *Portrait of Heinrich Mann*, 1910. Oil on canvas, 91 x 81 cm. Wien Museum.

Egon Schiele

Of the four major redefiners of portraiture in Vienna at the beginning of the 20th century, Egon Schiele in his early years held most tenaciously to the formula of reaching beyond outer appearances in an attempt to expose states of being.

In Schiele's portrait of his patron, Dr. Erwin von Graff, the good doctor appears as a shrunken-headed cadaver in a state of rigor mortis (FIG. 16). In the resultant morbid atmosphere, the prominently bandaged finger on his raised right hand has the impact of a grim joke. Although Schiele's attention was focused primarily on self-extension here, the unusual portrayal did not at all dismay Dr. von Graff, who not only accepted the painting, but remained a lifelong friend. We can see how quickly Schiele progressed from Klimt-like decorative depictions to the newly Expressionist convulsions of the soul, very often self-projections of the artist's own unease. It was in his self-portraits, however, that Schiele was most prepared to bare his soul, not in solitude but in public (FIG. 17). We see him scream

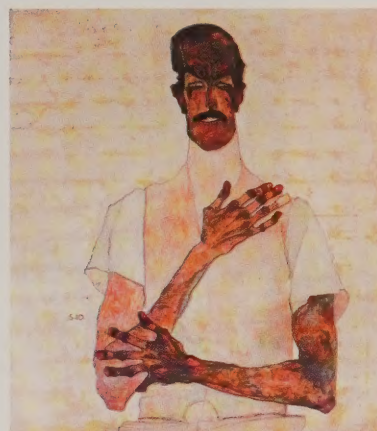


FIGURE 16. EGON SCHIELE. *Portrait of Dr. Erwin von Graff*, 1910. Oil, gouache, and charcoal on canvas, 100 x 90 cm. Priv. coll., courtesy Neue Galerie, New York.



FIGURE 17. EGON SCHIELE. *Nude Self-Portrait, Grimacing*, 1910. Gouache, watercolor and pencil with white heightening on paper, 55.8 x 36.9 cm. Graphische Sammlung Albertina, Vienna. Ph: HIP/Art Resource, NY.



FIGURES 18A and B. EGON SCHIELE A (left): *The Poet (Self-Portrait)*, 1911. Oil on canvas, 80.1 x 79.7 cm. **B (right):** *Seated Male Nude Self-Portrait*, 1910. Oil and gouache, 152.5 x 150 cm. Both: Leopold Museum, Vienna. Photos: Erich Lessing/Art Resource, NY.

the primal scream. We see him grappling with the urge to masturbate. We see him fighting with what was then called “the solitary vice,” gripping his offending hand or compositionally

amputating his hand and feet in proxy punishment (**FIGS. 18A & B**). All of this in unarticulated empty space, the self as never before exposed in the history of Western art.

SUBJECT AND PSYCHE – ARNOLD SCHOENBERG

The turn-of-the-century Viennese redefinition of portraiture is well captured by four artists’ portraits of the same man, Arnold Schoenberg, here shown being painted by his tennis partner, George Gershwin (**FIG. 19**). A harbinger of things to come can be glimpsed from Schoenberg’s own self-portraiture from when he was still living in Vienna: a series of angstful heads hovering in space (**FIGS. 20A-C**) like the one in the center with one staring eye larger than the other. It was the composer’s custom and delight to frame his small icons and hang them on his walls.

Of our four Expressionist painters, Richard Gerstl’s portrayal of Schoenberg is the least angstful, the most conventional and objective (**FIG. 21**). Here Schoenberg looks relaxed, seated on a low couch, an oriental rug on the floor, the wallpaper clearly indicated. He holds a cigarette in his left



FIGURE 19. Unidentified photographer. George Gershwin painting a portrait of Arnold Schoenberg, ca. 1934. Henry Botkin papers, Archives of American Art, Smithsonian Institution.



FIGURES 20A-C. A (Left): Photo of Schoenberg sent to Wassily Kandinsky on December 12, 1911. Ph: CNAC/MNAM/ Dist. RMN-Grand Palais/Art Resource, NY. **B (center): ARNOLD SCHOENBERG. *Green Self-Portrait*, 1910.** Oil on board, 33.2 x 24.7 cm. Arnold Schönberg Center, Vienna. **C (right): ARNOLD SCHOENBERG. *Self-Portrait*, c. 1910.** Gouache on paper, 23.2 x 18.6 cm. Arnold Schönberg Center, Vienna. © 2015 Belmont Music Publisher, Los Angeles/ARS, NY/Bildrecht, Vienna.

hand; the fingers of his right hand are arrayed normally. Is there any tension here? If the three little framed pictures high on the wall in the portrait — and we can see only the bottoms of their frames — are works by our amateur painter Schoenberg, it is possible that Gerstl has lopped off all three of them, either by compositional accident or by intention. Perhaps a Freudian slip?

Max Oppenheimer's 1909 portrait shows the public Schoenberg (**FIG. 22**). Situated in an unarticulated void, his glance seems wary. A visible correction of the right arm is a not too subtle device intended to make the sitter look and appear somewhat helpless, being jerked to attention with his hands behind his back. The artist conveys the pressures that weighed upon the over-burdened but tireless musician.

In Kokoschka's post World War I portrait of 1924, Schoenberg poses with his cello, with his left hand and its tumbling fingers being held higher, at forehead level, while his right hand is lower and holds the

bow (**FIG. 23**). Except the painter left out the cello, whose broadly brushed red shape takes us up the left-hand edge of the canvas. This device endows the composer with a sense of alertness and concentration, an affect that Kokoschka heightened with a display of agitated brushwork that showers over the composer and fills the picture. Here, in the 1920s

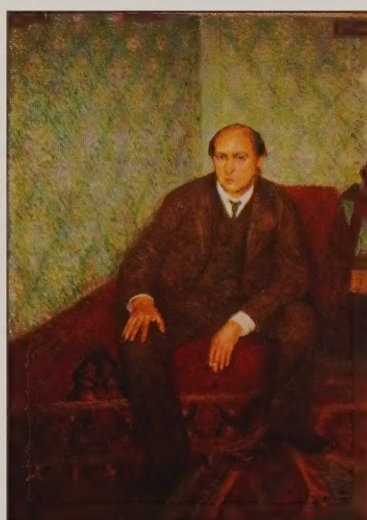


FIGURE 21. RICHARD GERSTL. *Arnold Schoenberg*. Museum der Stadt Wien. Ph: Alfredo Dagli Orti/The Art Archive at Art Resource, NY.

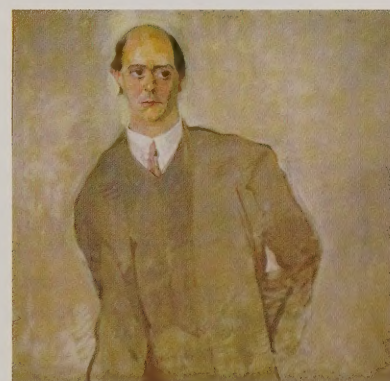


FIGURE 22. MAX OPPENHEIMER. *Arnold Schoenberg*. 1909. Canvas, 94.5 x 96.5 cm. Priv. coll., Switzerland. Ph: Erich Lessing/Art Resource, NY.

Kokoschka, the environment comments on the person portrayed.

Schiele's portrait of the composer dates from 1917, a year before the artist's untimely death from the influenza pandemic. Compared to the rather portly man we see in the photographs, Schiele's portrait study is a surprise (FIG. 24). The gaunt figure bristles with energy. The wrinkles in his vest and sleeve seem to echo the convolutions of keen mental activity. Along with his thoughtful expression, the composer's facial asymmetry is emphasized.

A luminous pearly white area streaks like a flash down the top of the head, lighting up a topography of thought. Schiele couples an objective recognition of the energy, endurance, and creativity of his model with a subjective response in which he gives Schoenberg an emaciated body strikingly similar to his own. Uncannily, however, in old age the composer resembled Schiele's portrait of him. Thus, the power of Expressionist portraiture, whose redefinition summed up vistas of the soul within.



FIGURE 23. OSKAR KOKOSCHKA. *Arnold Schoenberg*, 1924. Oil on canvas, 99.5 x 75.8 cm. Priv. coll., Switzerland. © 2015 Foundation Oskar Kokoschka/ARS, NY/ProLitteris.



FIGURE 24. EGON SCHIELE. *Portrait of the Composer Arnold Schoenberg*, 1917. Gouache, watercolor and black crayon, 45.7 x 29.2 cm. Priv. coll. Ph: Erich Lessing/Art Resource, NY.

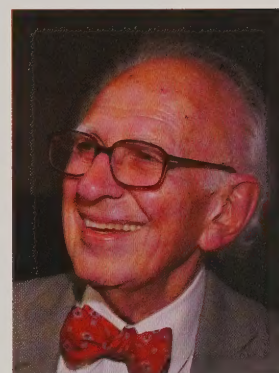
In conclusion, we have journeyed from late 19th century elegant facade portraiture to early 20th century uneasy, unmasking imagery to demonstrate that in Vienna, during the Age of Angst before World War I, four young artists, with their compelling depictions, redefined portraiture for their generation.

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CONT. ➔

PORTRAITURE AND THE BEHOLDER'S SHARE PERSPECTIVES FROM THE NEW BIOLOGICAL SCIENCE OF MIND

ERIC R. KANDEL*



“The central challenge for science in the 21st century is to understand the human mind in biological terms. ...

I would like to take up the scientific challenge here by focusing on how the new biological science of mind has begun to engage with figurative art.”

I would like to bring a brain science perspective to Alessandra Comini's discussion. Let me begin by putting brain science into perspective. The central challenge for science in the 21st century is to understand the human mind in biological terms. The possibility of meeting that challenge opened up in the late 20th century when cognitive psychology, the science of the mind, merged with neuroscience, the science of the brain. The result was a new biological science of mind that has allowed us to address a range of questions about ourselves. How do we perceive, learn, and remember? What is the nature of emotion, empathy, and consciousness? This new

biological science of mind is important not only because it provides a deeper understanding of what makes us who we are, but also because it makes possible a meaningful series of dialogues between brain science and other areas of knowledge. In a larger sense, these dialogues could help make brain science part of our common cultural experience.

I would like to take up the scientific challenge here by focusing on how the new biological science of mind has begun to engage with figurative art. In my life as a scientist, I have often benefited from taking a reductionist approach. I have tried to explore a larger problem that interests me, in my case, the problem of memory storage, by initially focusing on a simple example and exploring it deeply. I will do likewise now and will limit my discussion to one particular art form, portraiture, not only because it is the theme of this program, but also because it is a highly suitable art form for scientific exploration. We have now the beginnings of an intellectually satisfying understanding of how we respond to the facial expressions and bodily postures of others. From the perspective of brain science, portraiture is perhaps the most fascinating topic in art because, of all objects in the world,

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faces are the most special. One of the functions of portraiture is to understand the mindset of the person being captured on canvas. As Professor Comini discussed, portraiture also gives us the opportunity for understanding the mind of the artist. But, more important for brain science — and for this essay — it gives us the opportunity to understand the mind of the beholder, of the person who is examining the person captured on canvas.

“From the perspective of brain science, portraiture is perhaps the most fascinating topic in art because, of all objects in the world, faces are the most special.”

PORTRAITURE AND EVOLUTION

I want to explore portraiture from three scientific perspectives: evolution, cognitive psychology, and brain biology. Beginning from the perspective of evolution, I would ask, “Why are faces so special?” In his book, *The Expression of Emotions in Man and Animals*, Charles Darwin fully appreciated the fact that hands and body gesture, as Alessandra Comini mentioned, are extremely important ways of communicating information. But he recognized that faces are particularly special, and he argued the following: Evolution is driven by sexual selection, and, as a result, is central to human behavior. This was half a century before Freud. Facial expression is key to sexual attraction and to all social interactions. We recognize each other through our faces. Moreover, as social animals, we communicate not only our sexual attraction but aspects of all our emotions, even business interactions, through our facial expressions.

Darwin argued further that we all have the same number of features in our face: one nose, two eyes, one mouth. We therefore have a limited number of

components that we can use for facial expressions, and as a result, the facial expressions we have are universal. Everyone expresses emotions in a similar way. When we change from happiness to surprise, to disgust, contempt, anger, sadness, or fear, our expressions hold throughout the world and throughout all ages.

After Gerstl, Kokoschka was the first Expressionist to veer away from the Klimtian style of painting and depict emotions in a powerful way, as he did in his first attempt, a sculpture called *Self-Portrait as a Warrior* (FIG. 1). As is visible in the subject’s eyes, the artist called the work *An Impassioned Cry*, probably one influenced by Franz Xaver Messerschmidt. The artist expresses his subject’s (his own) anguish by screaming. When the architect Adolf Loos saw the sculpture he said, “This is not Klimtian. This is a completely new phase of art we’re looking at,” and he told Kokoschka, “This is what you’ve got to do. You’ve got to do portraiture.

You’ve got to do other people’s portraits, and I will tell them to pose for you. I’ll tell them, ‘If you don’t like the portrait, you don’t have to buy it.

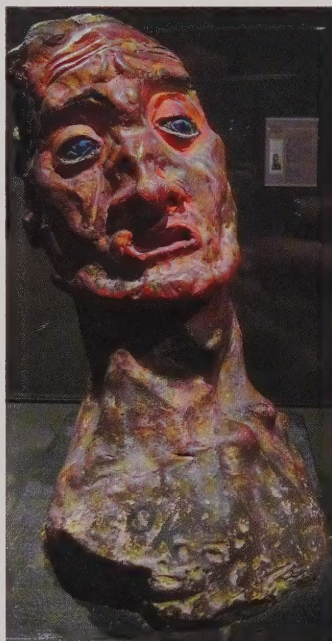
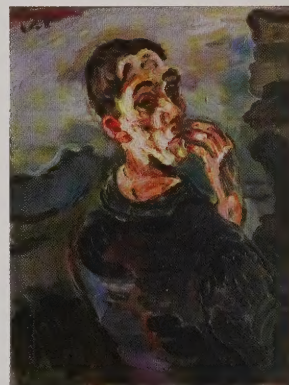


FIGURE 1. OSKAR KOKOSCHKA. *Self-Portrait as a Warrior*, 1909. Unfired clay painted with tempera, 36.5 x 31.5 x 19.5 cm. Museum of Fine Arts, Boston. © 2015 Fondation Oskar Kokoschka/ARS, NY/ Pro Litteris. This sculpture was owned by Adolf Loos until 1933.

FIGURE 2. OSKAR KOKOSCHKA. *Self-Portrait with Hand Near Mouth*, 1918-19. Oil on canvas, 83.6 x 62.8 cm. Leopold Museum, Vienna. Ph: Erich Lessing/Art Resource, NY. © 2015 Fondation Oskar Kokoschka/ARS, NY/ Prolitteris.



I'll take it.' So Kokoschka felt free to do portraits, including self-portraits. He also realized that the face is not the only way to communicate emotion: we also communicate emotion with our hands. Throughout his affair with Alma Mahler, he sucked his fingertips in a gesture of emotional insecurity, certain she would abandon him, which she did when she left him to pick up with Walter Gropius for the second time (FIG. 2). His painting *The Tempest* (Kunstmuseum, Basel) shows him nervous and insecure lying with Mahler in a little boat; she's sleeping peacefully while he is contemplating suicide by jumping overboard.

As Klimt illustrated, in addition to face and heads, bodily posture is important for conveying emotion. Although Klimt was not an Expressionist artist, his

delicate, honest, realistic depiction of the fact that women have a complete sexual life, particularly as expressed in the face, was extraordinary (FIG. 3). Freud, on the other hand, would argue that women lack the male sexual drive, that they don't enjoy sex because they feel castrated; they have sex primarily to produce babies, particularly male babies.



FIGURE 3. GUSTAV KLIMT. *Seated Woman in Armchair*, c. 1913. Pencil and white chalk, 56.4 x 37.3 cm. Priv. coll., courtesy Neue Galerie, New York.

but you don't know whether the subject is modest or whether she's masturbating. With Klimt, on the other hand, there's never a moment's doubt on the part of the viewer (FIG. 5).



FIGURE 4. Top: GIORGIONE. *Sleeping Venus*, c. 1508-10. Oil on canvas, 108.5 x 175 cm. Gemäldegalerie Alte Meister, Dresden. Ph: Erich Lessing/Art Resource, NY.
Bottom: TITIAN. *Venus of Urbino*, 1538. Oil on canvas, 119 x 165 cm. Uffizi, Florence. Ph: Nicola Lorusso. Ph: Alinari/Art Resource, NY.

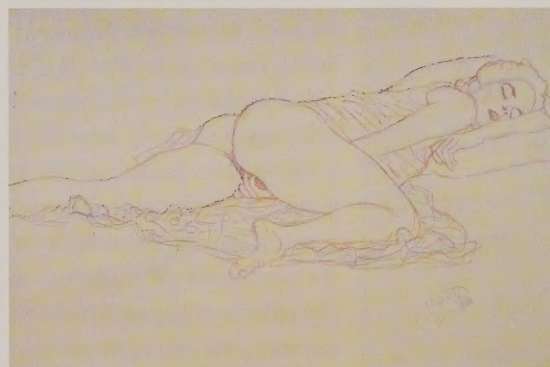


FIGURE 5. GUSTAV KLIMT. *Reclining Nude Facing Right*, 1912-13. Pencil and red and blue pencil. Priv. coll., courtesy Neue Galerie, New York.

If we compare Klimt's depiction of a female nude to that in traditional Western art, we can appreciate his insight regarding position and hand. The female nudes by Giorgione, by Titian, and by others are depicted as mythological characters, for example, Venus, and the nudes, look at the beholder, usually a prurient male, as if looking at him would give him greater satisfaction (FIG. 4). In these nude portraits, you see a hand draped over a pubic area,



FIGURE 6. EGON SCHIELE. *Self-Portrait in Black Cloak, Masturbating*, 1911. Gouache, watercolor and pencil on paper, 48 x 32 cm. Graphische Sammlung Albertina, Vienna.

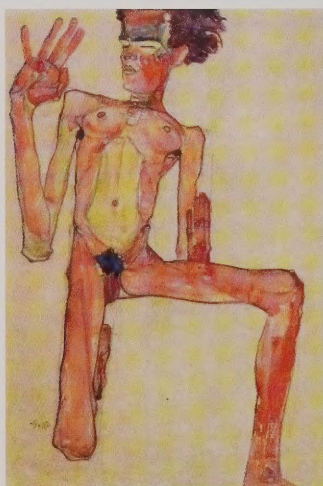


FIGURE 7. EGON SCHIELE. *Kneeling Self-Portrait with Raised Hands*, 1910. Watercolor and black crayon on paper. Leopold Museum, Vienna.

Schiele was not about to be outdone by Klimt. Whereas Klimt had women masturbating, Schiele had men masturbating; he even had himself masturbating. There were earlier male nude self-portraits, for example, there are Gerstl nudes, and even earlier nudes. Dürer painted himself nude as an adolescent. But Schiele's was the first male nude masturbating ever depicted in Western art (**FIG. 6**). As both Alessandra Comini and Jane Kallir have pointed out, Schiele loved to assume atypical positions, which Jane has described as defiant and confrontational (**FIG. 7**), and he did so often. Whereas Klimt did no self-portraits and Kokoschka did a few, Schiele painted in a two-year period, one hundred self-portraits, more than Rembrandt and Beckmann, who depicted themselves throughout the whole life cycle. In so doing he was inspired by the idea that he needed his whole body to communicate his sense of being, his feeling state, and the feeling state of the world, *to the world*.

Schiele did this, I believe, because he wanted to change society's conception of the artist. He argued, after Velazquez, that when someone buys a painting, he is looking at the painting not simply because of the subject but because the subject was depicted by the artist, the painter. Velazquez had announced this previously in *Las Meninas*, one of the great paintings in Western art, which depicts the artist paint-



FIGURE 8. DIEGO VELAZQUEZ. *Las Meninas*, 1656. Oil on canvas, 3.18 x 2.76 m. Museo del Prado, Madrid. Ph: © Museo Nacional del Prado/Art Resource, NY.

ing the royal family, who can be seen in the mirror in the back (**FIG. 8**). In the foreground, we see the princess surrounded by her playmates young and old, but it is Velazquez himself who demands our attention. He's the one who's putting the whole thing together. Jane Kallir likes this quote from Oscar Wilde: "Every portrait that is painted with feeling is a portrait of the artist himself."

PORTRAITURE AND COGNITIVE PSYCHOLOGY – THE BEHOLDER'S SHARE

After evolution, the second science providing insight into portraiture was cognitive psychology. Alois Riegl of the Vienna School of Art History has been a much overlooked but amazing figure in art history. Riegl was the first to argue that art history would die unless it became more scientific and that the science that it should align itself with was psychology. He argued that art invited the viewer's participation, and he saw the beholder's share as the key problem to focus on for a scientific approach to art. He pointed out that a painting is not complete unless an artist does it and a beholder responds to it. Although this would seem the most obvious insight in the world, no art historian had ever expressed it in this way before. Riegl thought that focusing on

the psychological response of the beholder was a great challenge for art historians to tackle.

“Riegl argued that art invited the viewer’s participation, and he saw the beholder’s share as the key problem to focus on for a scientific approach to art. He pointed out that a painting is not complete unless an artist does it and a beholder responds to it. Although this would seem the most obvious insight in the world, no art historian had ever expressed it in this way before.”

Riegl’s two great disciples of the following generation were Ernst Kris and Ernst Gombrich. Kris argued that if you and I look at the same portrait, we see it slightly differently. Why? To begin with, art has a certain ambiguity to it that we each interpret in a slightly different way so when each of us looks at a work of art, at a portrait, we are actually undergoing a modest creative experience of our own. We are recreating the image according to our own perception of it. So, in addition to the creative act of the artist, in a modest way there’s the creative act of the beholder, who recapitulates in his or her own brain a creative process that parallels that of the artist. Gombrich loved this idea, and he began to study visual perception to learn how it could give rise to creativity, which he soon realized applies to every aspect of the visual process.

When Gombrich began to read in visual psychology, he came across Bishop Berkeley’s famous paper on inverse optics. Berkeley pointed out that when I look at an image the image cast in my retina is produced by the photons bouncing off the person or object. But these photons provide incomplete information, inadequate to reconstruct what the object or person is like. One needs other pieces of information, which Helmholtz in the nineteenth century first pointed out were bottom-up and top-down.

Bottom-up information is what we are born with. After evolving for millions of years, we have become accustomed to life on earth, and our visual system has evolved to service that life. We are born with a visual system in which we can recognize faces. We also can realize that if one person appears very tall while another person appears much shorter, this might be a matter of perspective. The taller person stands closer to us than the one who appears shorter. We realize that if there’s a source of light, it is probably from above because the sun comes from above. So we have these built-in premises that are amazingly accurate except under certain circumstances. Thus, children when they’re born can recognize hundreds of faces. If we put them in a monkey colony, they can tell the difference between hundreds of monkeys, which is something we, as adults, can no longer do.

The bottom-up processing that is built into our system is based in part on guesses, which are correct 98 percent of the time. But, as Gombrich realized, bottom-up processing can be tricked. One way is through illusions. To document this idea, Gombrich played with various illusions. A good example is the Kanizsa Square (FIG. 9). Look at the four white circles and the black square lying on top of them. Do you see the black lines that form the square? We all do. But in fact it’s all in our head! It’s simply not there. We are filling in lines that are absent. If we rotate the circles (FIG. 10), we see that they are not complete circles; they are more like

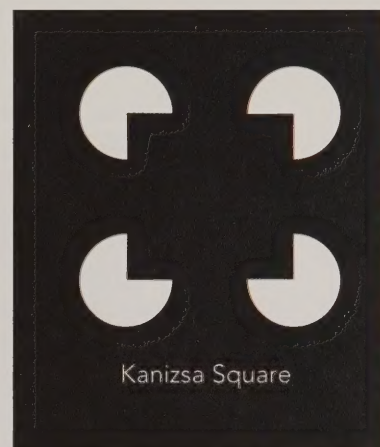


FIGURE 9. A Kanizsa Square showing the illusion of a black square overlaying 4 circles.

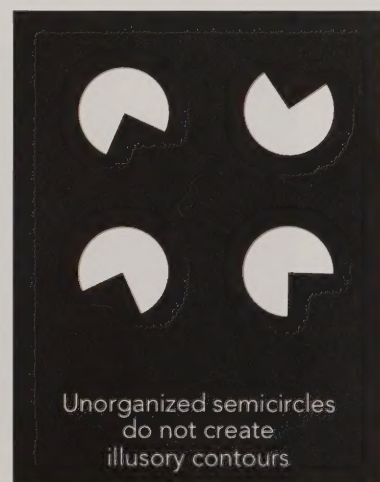


FIGURE 10. Unorganized semicircles do not create illusory contours.

Flow Diagram for the Neural Circuits Involved in the Beholder's Share of A Portrait

1) Analysis of Facial Contours of a Portrait: Psychological Response

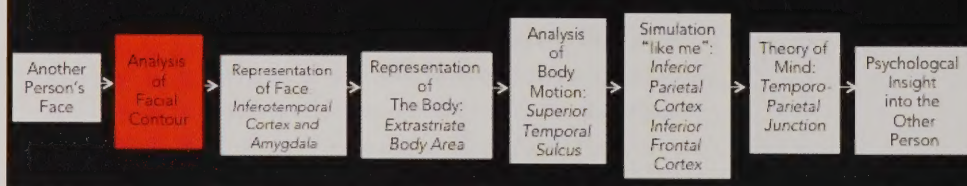


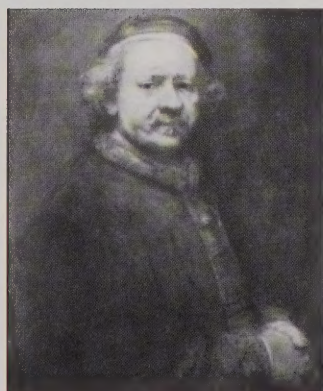
FIGURE 11.

semi-circles with cut-outs. We fill in the square because we think that is what would make most sense in the natural world.

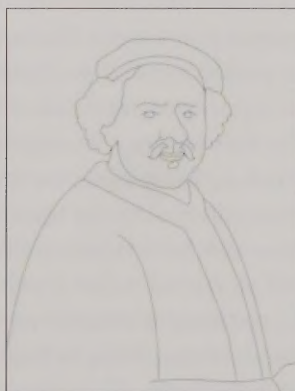
Gombrich played with dozens of similar examples. He pointed out that the next step was to understand the brain processes involved with perception, and he began to carry out this research near the end of his life (he died in 2006) in collaboration with Richard Gregory, an experimental psychophysicist. **FIGURE 11** shows the very beginnings of a neural circuit of the beholder's share. Parts of the neural circuit are concerned with the analysis of facial contour; with the representation of the detailed features of the face; the representation of the body; with the

analysis of the motion of the body; simulation of what it's like to look at a painting and infer what is going on in the mind of the person being depicted; theory of mind that goes even deeper into the mental attitudes of the person being depicted; and, finally, putting this together to gain insight into the mind of the subject being depicted. I would like to illustrate a few of these processes.

The analysis of facial contour from a psychological point of view allows one to address Darwin's point that faces are special. The reason that faces are special is because the brain treats faces differently from all other objects. Faces are particularly easy for us to recognize although computers, which have enormously greater computational capacity than we do, have difficulty doing it. We can easily recognize a line drawing of a Rembrandt self-portrait, for example (**FIGS. 12A AND B**). If we exaggerate the features or certain expressions, if we make a cartoon out of it, we can recognize it even better. We recognize a cartoon of Nixon much better than a photograph of the president.



A



B

FIGURES 12A and B. Our brain easily recognizes a line drawing of Rembrandt's *Self-Portrait at the Age of 63*. (Line drawing courtesy Charles Stevens.)

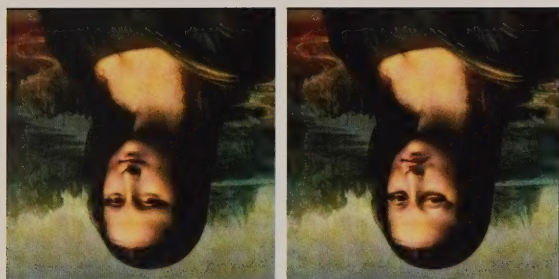


A

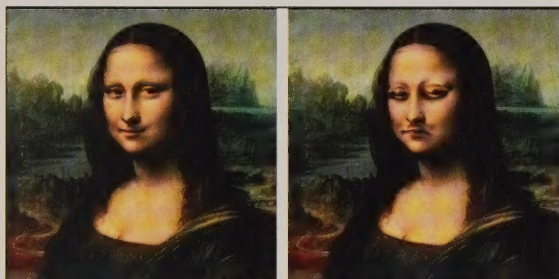


B

FIGURES 13A and B. GIUSEPPE ARCIMBOLDO. *The Vegetable Gardener*, c. 1590. Oil on panel, 35 x 24 cm. Museo Civico Cremona, Italy. Ph: Eric Lessing/Art Resource, NY. **A.** Shown right-side up. **B.** Shown upside down.



14A



14B

FIGURES 14A and B. LEONARDO DA VINCI, *Mona Lisa*, 1503-c. 1516, detail. Oil on panel. Musée du Louvre, Paris. Shown: (A) Upside down, next to a distorted version. (B) Right-side-up. Our eyes do not distinguish the distortions when the image is inverted. (Image modified by Chris Willcox.)

Moreover, there is an unusual aspect of our perception of faces that holds true only for faces and not for any other object. If I hold a bottle of water and turned it upside down, I would spill the water, but you would still recognize it as a bottle of water. When we turn a face upside down, however, we have a difficult time seeing it. This is beautifully evident in the work of the Italian painter, Giuseppe Arcimboldo, who worked for the Habsburg Monarchy for many years, first in Vienna then in Prague. He loved to make facial portraits from vegetables, and in his famous *The Vegetable Gardener* we “see” the nose and the cheek, a perfectly clear image of a person, but, if we turn it upside down, there’s no way we could recognize a face (**FIGS. 13A & B**). In a different but related example, **FIGURE 14A** looks like a perfectly good upside-down version of an image we probably recognize, the *Mona Lisa* in the Louvre. When the same image is placed right-side up, however, we see that it is distorted (**FIG. 14B**). Upside down, we have great difficulty seeing that distortion.

PORTRAITURE AND BRAIN BIOLOGY

What about the biological representation? We did not know precisely what area of the brain was involved in the representation of faces until around 1947. It turned out, not surprisingly, that more space in the brain is devoted to the representation of faces than to any other object. Joachim Bodamer discovered that faces are represented in the inferior portion of the temporal lobe — one of the four lobes in the brain (frontal, parietal, occipital, and temporal) (**FIG. 15**). Visual information enters the back of the brain, in the visual cortex V1, and in this area it conveys information to the inferior temporal cortex, first in the posterior part and then at

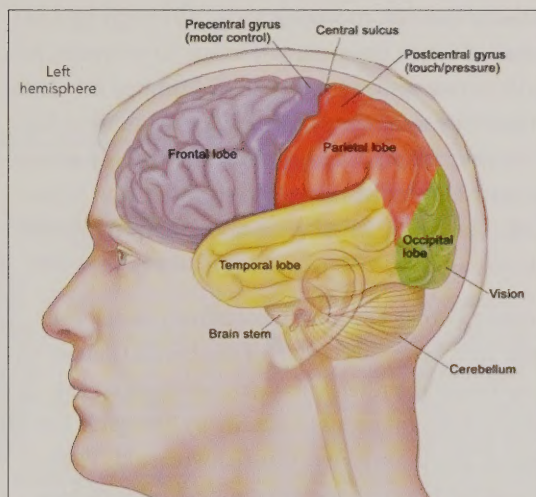


FIGURE 15. Diagram of the human brain showing the temporal lobe (in yellow), where facial recognition occurs. Image: Terese Winslow.

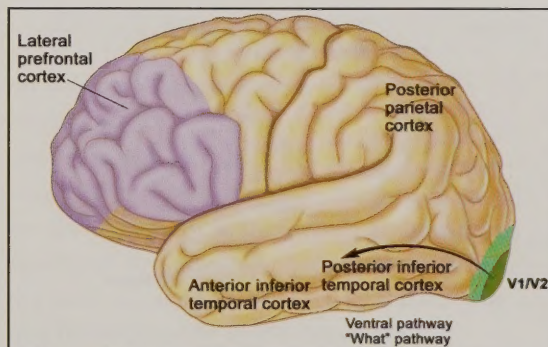


FIGURE 16. Diagram showing the pathway of visual information. Image: Terese Winslow.

its anterior part (FIG. 16). Bodamer recognized that face blindness results from lesions in this part of the temporal lobe. If you have a lesion in the posterior part of the inferior temporal lobe, you don't recognize a face as a face. Oliver Sacks' patient in "The Man Who Mistook his Wife for a Hat" had a lesion here. The wife took her husband to the doctor, and when the visit was over, he tried to pick up her head and put it on *his* head thinking it was his hat. If you have a lesion in the anterior part of the inferior temporal lobe — and this type of prosopagnosia is not uncommon — since about 10 percent of people in the audience probably were born with it — you can recognize a face *qua* face, but you have difficulty recognizing specific people. Oliver Sacks himself has prosopagnosia. Although he was in analysis with the same physician for 46 years, he could not recognize him when he bumped into him in the lobby until somebody else called out his doctor's name. Chuck Close is probably the only portrait artist in the history of Western art who is face blind. That's why he takes a photograph first, puts it down, and paints around it.

Recently, people began to record from single units, single cells from this region of the brain. Charles Gross began the research, which has been continued in a brilliant series of studies by Margaret Livingston, Doris Tsao, and Winrich Freiwald. They imaged the brain of monkeys and found 6 areas that lit up when they showed the monkeys faces of humans or monkeys (FIG. 17). They conducted most of the experiments with monkeys because

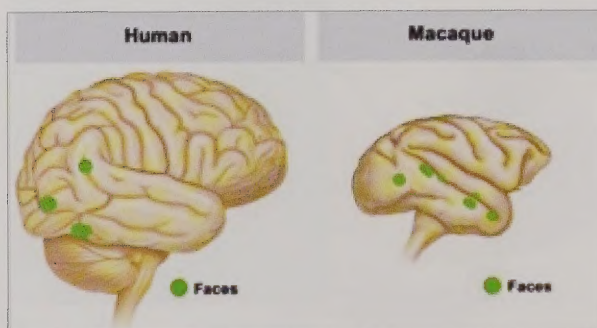


FIGURE 17. Diagram showing (green circles) the areas of human and macaque brains that light up during facial recognition experiments. Image: Terese Winslow.

"Faces are particularly easy for us to recognize although computers, which have enormously greater computational capacity than we do, have great difficulty doing it."

not only could they image monkey brains, but they could also put electrodes into those regions. The researchers found that there were six face patches that responded to faces. In the other surrounding areas, cells did not respond and nothing lit up. When they recorded from these cells, the researchers saw that about 90 percent of the cells responded to faces. In some face patches, it was to the frontal view of the face; in some, to the profile; in some, cells responded to emotional expression.

Let me give you some examples of cells responding to emotional expression as recorded from a single face patch. If you show a monkey a picture of a monkey or of a human being, the cells in this face patch fire. If you show the monkey a cartoon — the cell likes it even more. But it's a gestalt; the whole

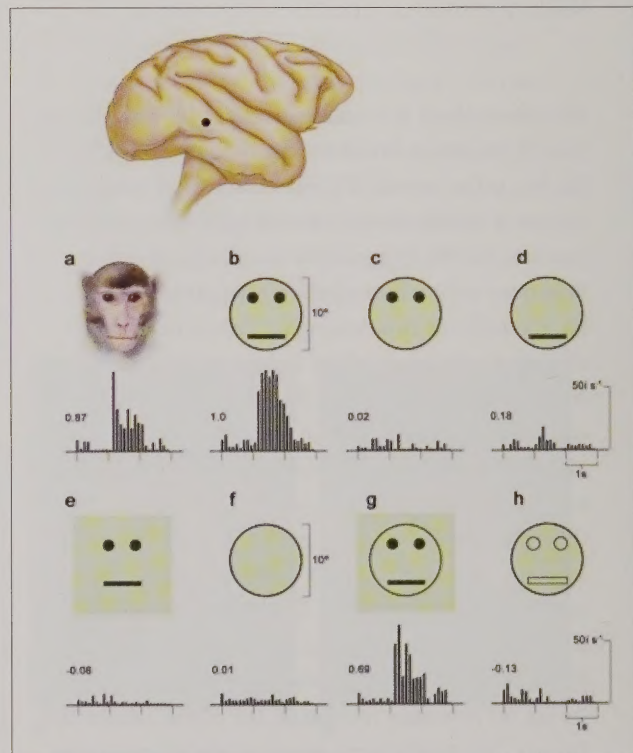


FIGURE 18. Diagram showing that a monkey's brain is most active in recognizing a face when the eyes, mouth, and circular shape are present (examples: a, b, g). Image: Terese Winslow.

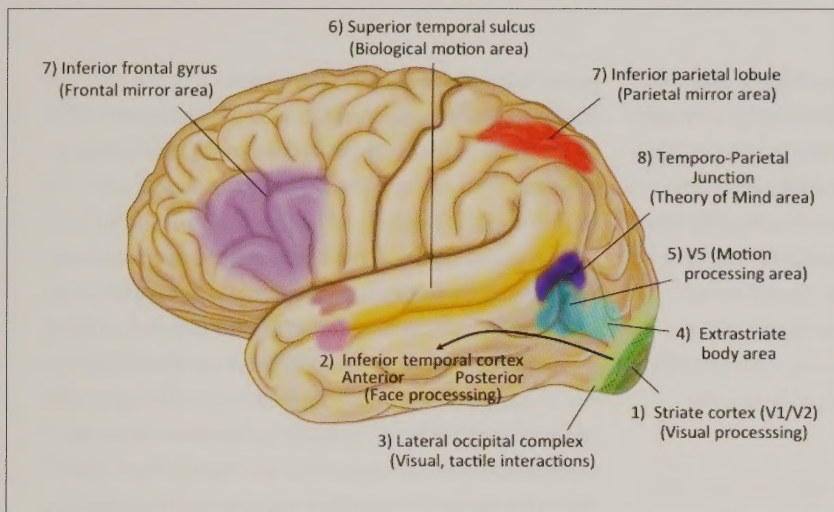


FIGURE 19. Diagram showing the brain areas involved in the beholder's response to body, motion, biological motion, mirroring motion and empathy. Image: Terese Winslow.

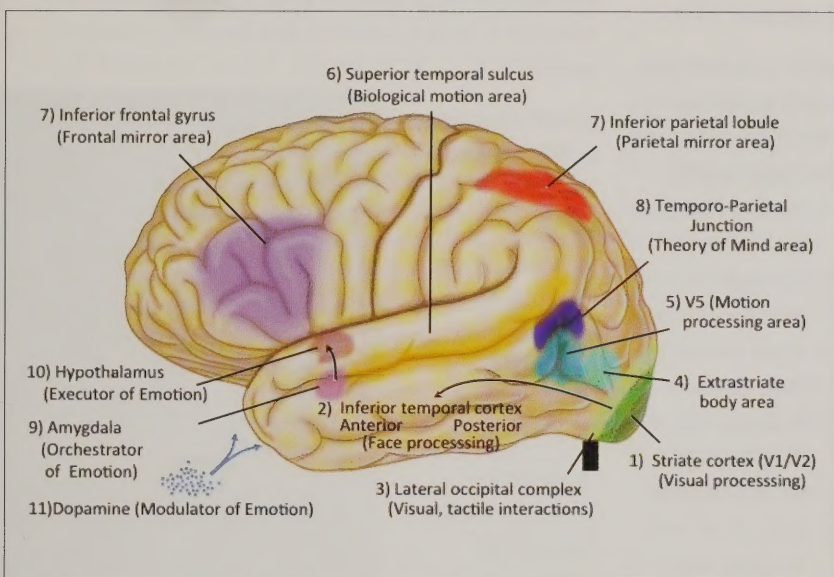


FIGURE 20. Diagram showing the brain areas (numbers 9-11) involved in the beholder's response to emotion depicted in portraiture. Image: Terese Winslow.

thing has to be there except for the nose. For some reason, noses are not important — probably because noses are not, very much, involved in emotional expressions. If you take the mouth out, there is no firing of the cells; take the eyes out, no firing. If you have the eyes and a mouth and no circle, there is no firing; the circle without any eyes and mouth, no firing. You must have the whole thing. Turn it upside down, no response; but exaggerate it, and the cells go wild (**FIG. 18**).

my mirror neurons (these were first found in monkeys) respond when I pick up a glass of water. But the same cells also respond when *you* pick up a glass of water. My mirror neurons mirror the actions that *you* do without my doing anything. Some scientists now think that aspects of our emotional response to a work of art, certain aspects of the stimulation, may be mediated by mirror neurons.

Theory of mind is when I try to understand what is going on in your head, when I try to understand you

We now have a good understanding of all the other areas: body, motion, biological motion, mirroring motion, and theory of mind. Let me just briefly tell you what each of them does (**FIG. 19**). As I mentioned previously, information enters the back of the brain. Then there is an area that processes all motion — a bicycle moving, a car moving, a person moving. In addition, there's an area concerned with biological motion. When I reach out my hand to grab yours, when I walk toward you, this area becomes active. Would an autistic person have difficulty detecting a car moving? No, not at all. Would that same person have difficulty responding to your arm going out to them, a social gesture? The answer is "yes," and we can detect that. People with autism have a difficult time responding to biological motion.

There are two patches in the supplementary motor cortex that respond to other people's movement. My mir-

as a separate person with your own aspirations, your own drives, as Kokoschka or Schiele did in a Freudian manner with the subjects of their portraits. But, in addition to these self-cognitive and perceptual aspects, some aspects of the system involved in the beholder's share deal with emotion (**FIG. 20**). The amygdala orchestrates all emotion, anger as well as affection. Next, the hypothalamus and its areas execute that emotion. Then the modulatory systems, particularly the dopamine system, enhance the appreciation of emotion.

When we observe the works of Schiele, Klimt, and many other artists, we confuse emotions. Existential anxiety typifies Schiele: even when he's making love he looks unbelievably frightened (**FIG. 21**). Eroticism merges with existential anxiety.

In my favorite Klimt painting, *Judith and Holofernes*, Klimt shows not only that women have independent sexuality, but also that they, like men, can fuse aggression with sexuality (**FIG. 22**). Briefly, the story: In 500 B.C. Holofernes, an Assyrian general, laid siege around Bethulia near Jerusalem.

After a week or two, the siege became impossibly difficult for the inhabitants: there was no food, and people were in desperate straits. Judith, a modest 24-year-old widow, decided to take it upon herself to save her people. Sneaking past the guards with her handmaiden, she found Holofernes celebrating at a

party, where she encouraged him to drink to excess. After he took her back to his tent, she seduced him, after which, exhausted from sex and drink, he fell asleep. She then took a sword off the wall and chopped off his head. Typically in Western art, Judith has been depicted as a modest widow sacrificing herself for her people. But this is not how Klimt depicts her. His is no modest widow — wearing elegant Wiener Werkstätte clothing, her left breast elegantly exposed, she is in a postcoital trance, fondling the head of Holofernes — an amazing fusion of aggression with eroticism. How does this come about? How can sex and aggression, two mutually exclusive instinctual behaviors, reinforce each other? How, for example, can a male tiger fight another male tiger and, at the same time, look at a female and become sexually aroused?

David Anderson at Caltech has recently begun to address this question. We've known for years that the hypothalamus contains neurons involved in aggression. When we stimulate neurons in the hypothalamus, we can elicit aggressive acts. Anderson recapitulated that finding and found, to his surprise, that right near these neurons involved in fighting are neurons involved in mating. We now have techniques



FIGURE 21. EGON SCHIELE. *Seated Couple (Egon and Edith Schiele)*, 1915. Gouache and pencil on paper, 52.39 x 41.28 cm. Graphische Sammlung Albertina, Vienna. Ph: Nimatallah/Art Resource, NY.



FIGURE 22. GUSTAVE KLIMT. *Judith with the Head of Holofernes*, 1901. Oil on canvas. Österreichische Galerie Belvedere, Vienna. Ph: Erich Lessing/Art Resource, NY.

whereby we can inject a genetically labeled—dye—different colored dyes, different colored—markers—that allows us to selectively stimulate with different laser lights one population of cells that has one type of marker versus another. By injecting different cells, Anderson found that not only do we have cells involved in aggression and cells involved in mating, but 20 percent of the cells at the border are involved in both. Anderson observed that when he stimulated them weakly, he elicited mating; when he stimulated them more strongly, he elicited fighting. Freud might have lacked insight regarding female sexuality, but here was a biological verification of his insight that eroticism and aggression can be fused. But this insight was by no means unusual to Klimt, who, it is said, had affairs with many women.

BRAIN SCIENCE AND LOVE — OF ART

Now we can ask the question: “Can brain science reveal something about how one falls in love with art?” What accounts for the fact that Ronald Lauder paid one hundred and thirty-five million dollars for *Adele Bloch-Bauer I*?

Two areas of the brain comprise the neurocircuit that become recruited for love: 1) the orbito-frontal cortex, which lights up when we are sexually aroused by an attractive face, and, 2) the modulatory system of the brain, particularly the dopamine system. Many components of the brain are modulated by the dopamine system, which is important for primary reward for, food, drink, and sex. It’s also recruited for addiction, for romantic love, and for love of art. Its recruitment for romantic love and for love of art are quite similar. So, if we love somebody, the dopaminergic system lights up. If we are rejected, it lights up even more. If we show somebody a picture of their love object, we can observe the dopamine system lighting up, but if we show them that same picture once they’ve been rejected, the dopamine system explodes.

So, a fourteen-year-old Ronald Lauder goes to Vienna and falls in love with *Adele Bloch-Bauer*.

The adult Lauder returns there every summer, becomes, ultimately, ambassador to Austria, spends time in Vienna, comes back to this painting time and time again, but can’t have it. The man has a lot of money; he could easily acquire it. When the painting eventually comes on the market, his dopamine system is practically exhausted. He would have paid a hundred and forty million dollars for it.

“By injecting different cells, he found that not only do we have cells involved in aggression and cells involved in mating, but 20 percent of the cells at the border are involved in both.”

In conclusion, let me say that I strongly believe that one of the great enterprises for the human mind is to form linkages between the sciences and the humanities. I think this is beginning to occur in our generation. As Alessandra Comini discussed previously, the Viennese Art Historians, Riegl, Kris and Gombrich were among the first to work at establishing linkages between art and sciences by focusing on the beholder’s share. Their pioneering attempts at this great enterprise continue at this *IFAR Evening* where the spirit of Modernism is being carried forward.

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EGON SCHIELE RECEPTION AND RESTITUTION

JANE KALLIR*



As my colleagues have just vividly demonstrated, “Vienna 1900” was a period of remarkable intellectual ferment, producing groundbreaking innovations in art, science and psychiatry, as well as music, philosophy, literature and a host of other creative endeavors. These far-ranging cultural accomplishments are today widely acknowledged, but such was not always the case.

Of Austria’s three leading modern artists, only Oskar Kokoschka enjoyed any sort of international reputation in the period between the two world wars.

Gustav Klimt and Egon Schiele both died in 1918 without having established a significant foreign presence. Now they were no longer alive to promote themselves.



FIGURE 1. Photographs of the 1923 Egon Schiele exhibition at the Neue Galerie in Vienna.

* Jane Kallir is Co-Director of the Galerie St. Etienne and author of the catalogue raisonné, *Egon Schiele: The Complete Works*.

In Austria, however, Klimt and Schiele were well known in the 1920s. A number of Viennese dealers showed and sold their work: Gustav Nebehay, Richard Lanyi, the Galerie Würthle, and the Neue Galerie, which was founded by my grandfather, Otto Kallir.

The Neue Galerie opened in 1923 with the first major posthumous Schiele exhibition (FIG. 1). My grandfather also represented Kokoschka, Alfred Kubin, and many other contemporary artists. He discovered Richard Gerstl (who had died in 1908) and exhibited the work of Gustav Klimt. But I would have to say that Schiele really was Kallir's dominant lifelong passion. In 1928, he organized an enormous Schiele retrospective on the occasion of the 10th anniversary of the artist's death. And in 1930, he published the first catalogue raisonné of Schiele's oil paintings — a book that has not only formed the basis of all subsequent Schiele research but provided crucial documentation of pre-war provenances after the Holocaust.

Most of you are probably aware that Hitler was unusually obsessed with art: art that he loved, and art that he hated. The art that he loved, he stole; and the art that he hated, he also stole, but to very different ends.

Now, given the recent focus on “degenerate art” — which was the subject of a hugely successful show at New York's Neue Galerie in 2014, and also features in discussions of the controversial Gurlitt collection — I think it is worth stressing that the art Hitler hated, that is, the “degenerate” art, was never specifically targeted for looting. Whereas Hitler aggressively went after art that he liked and wanted for himself or his cronies, the looting of degenerate art was an indirect by-product of other Nazi policies.

The campaign against degenerate art began as a propaganda effort. Modern works were removed from German museums and exhibited in the notorious 1937 “Entartete Kunst” exhibitions (FIG. 2). Inasmuch as the museums' property belonged to the German state, this cannot be considered looting per se.

After the “Entartete Kunst” exhibitions, Hitler realized that there was a market for some of these works abroad, and many were sent to auction in Lucerne, Switzerland. There was a moral imperative to boycott the Lucerne auction not because the works were stolen, but because it was widely known that the sales proceeds would be used to arm the Nazi regime. Nevertheless, those who trafficked in degenerate art deaccessioned by German museums, including the dealers Hildebrand Gurlitt in Germany and Curt Valentin in New York, could to some extent justify their actions by saying they were saving the works. After all, the Nazis burned art along with other cultural artifacts of which they disapproved.

By the time Hitler annexed Austria in March 1938, the organized campaign against degenerate art was winding down. Austrian museums were never systematically purged, though the directors were smart enough to move potentially offending works into storage. Schiele was not targeted the way German Expressionists had been.

AUSTRIAN JEWISH COLLECTORS

In Austria, the appropriation of modern art by Nazis and their collaborators resulted mainly from the forced liquidation of Jewish assets. Pursuant to a law passed on April 26, 1938, all Jewish-owned property had to be inventoried and appraised by July 30 of that year. In November, a law was passed

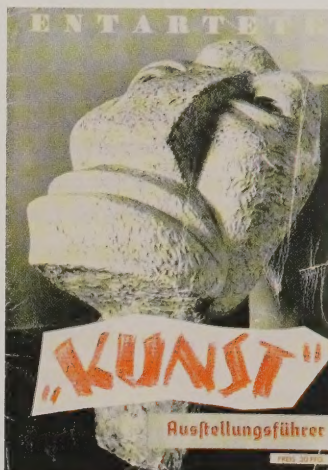


FIGURE 2. Front cover of the catalogue of the “Degenerate Art” exhibition in Munich in 1937.

implementing a “flight tax” of 25% on the assets of any Jew wishing to emigrate. Artwork for export had to be approved by the National Monuments Office. Art that remained behind was vulnerable to the predations of unscrupulous trustees, and works left in storage were frequently seized by a special arm of the Gestapo established for that purpose.

Jewish collectors who did not flee faced increasingly dire circumstances. Denied any means of earning money, they were compelled to sell their art, sometimes for a fraction of its true value. When, eventually, they were sent to the camps, opportunists or the government often took whatever was left.

Recent efforts to increase public awareness of Nazi art looting have created the impression that almost no Jews were able to hold onto their art. But in fact people’s situations were extremely variable, and every collection has a different story.

Although the Nazis did review all property leaving the country, household furnishings were routinely approved for export. And since the Nazis were not interested in degenerate art, export licenses were usually granted for modernist works.

Packing up and shipping all one’s worldly goods to a destination perhaps as yet unknown required the assistance of those who remained behind: friends, relatives, lawyers and the like. There are many horrific stories about Jews who were betrayed the minute they left the country, but other émigrés were well served by those in whom they placed

their trust. Even Jews who did not emigrate and eventually perished were sometimes able to preserve their art by storing it with honest friends.

My family’s flight from Austria was largely facilitated by my grandfather’s secretary, Vita Kün-

stler (**FIG. 3**). Since Jews were no longer allowed to own businesses after the *Anschluss*, Kallir signed the Neue Galerie over to Künstler, who voluntarily gave it back after the war. My grandfather could not export the more conservative 19th century paintings in his inventory, but he did get an export license for many significant works by Klimt, Schiele and Kokoschka. Künstler supervised the shipment of these works to Paris, where Kallir had established the first incarnation of the Galerie St. Etienne.

“Collectors, such as my grandfather [Otto Kallir], who emigrated before the pertinent regulatory controls were implemented, had things much easier than those who hesitated.”

Assuming the guise of casual tourists and carrying only hand luggage, my family took the night train to Switzerland in June 1938. Because my grandfather had had the prescience to send money abroad prior to the *Anschluss*, the Swiss were willing to give the family entrance visas. They were not willing, however, to give Kallir a work permit, and he did not have enough money to survive without working. Therefore he travelled on to Paris, leaving my grandmother, father and aunt in Switzerland.

The French gallery needed a French name. Etienne means Stephen in French, and the original Neue Galerie had stood in the shadow of Vienna’s renowned landmark, the Cathedral of St. Stephen. So “St. Etienne” was chosen to evoke, to those in the know, old Austria.

The French did give my grandfather a work permit, but for some reason they would not give the rest of the family entrance visas. This proved a fortuitous situation, since it forced the Kallirs to look for a third country that would accept everyone. Thus, they arrived in New York in September 1939, shortly before war broke out in Europe.

With scant command of English, Kallir opened the Galerie St. Etienne on West 57th Street in October 1939. Although he had brought with him an



FIGURE 3. Photograph of Otto Kallir and his secretary, Vita Künstler, in Vienna in the spring of 1938.



FIGURE 4. Left: PAUL CÉZANNE. *Man with Crossed Arms*. Oil on canvas, c.1899. Priv. coll. Right: VINCENT VAN GOGH. *L'Arlesienne*, 1890. Oil on canvas, 65 x 54 cm. São Paulo Museum of Art. Two of the paintings in Otto Kallir's "Saved from Europe" exhibition in New York in 1940. Neither sold.

impressive starting inventory, the work proved virtually unsalable, in part due to the lingering effects of the Great Depression, and in part due to my grandfather's lack of American connections.

SAVED FROM EUROPE

In 1940 Kallir mounted an exhibition he called "Saved from Europe" that included major paintings by Cézanne, Van Gogh, Klimt and Schiele (**FIG. 4**). The critical response did not bode well. "A good many of these canvases by reputable Europeans are definitely worth saving from Europe ... from whence they have recently come," wrote the *Herald*

and millions), only one work sold — a small oil (**FIG. 5**), for \$250 to a refugee, who paid off the sum over a year-and half in \$13 monthly installments.

"Since the Nazis weren't interested in degenerate art, export licenses were usually granted for modernist works."

Just about the only people in America who had ever heard of Schiele, or Klimt, were Austrian refugees, who of course had very little money. The Museum of Modern Art actively supported German Expressionism in the 1930s, but Austria, having been absorbed into Hitler's Reich, literally did not exist. The Galerie St. Etienne was the only place where Austrian artists were cohesively identified as such.

Although German and Austrian modernism had been banned by Hitler, this did not prevent the artists from being tarred by anti-Germanic prejudice once America entered the war in December 1941. After the war, as the U.S. sought to assume a cultural supremacy commensurate with its new role

as a global superpower, the American art world aggressively appropriated the mantle of French modernism. In most post-war art histories, Austrian and German modern art is relegated to footnote status.



FIGURE 5. EGON SCHIELE. *A Tree in Late Autumn*. Oil on panel, 42 x 33.6 cm. Leopold Museum, Vienna. Sold by Otto Kallir in New York in 1941 for \$250.

POST-WAR SUCCESS

Nevertheless, things did begin to look up for Schiele in the post-war period. The Galerie St. Etienne mounted a second Schiele show in 1948, to commemorate the 30th anniversary of the artist's death. Shortly thereafter, in 1951, Kallir sold the *Portrait of Paris von Gütersloh* (FIG. 6) to the P.D. McMillan Land Company for the bargain price of \$1,500, with the understanding that it would be donated to the Minneapolis Institute of Arts. When the donation was consummated in 1954, the *Gütersloh* became the first Schiele oil to enter a U.S. museum — a milestone that received national press coverage.

FIGURE 6. EGON SCHIELE. *Portrait of the Painter Paris von Gütersloh*, 1918. Oil on canvas, 140.33 x 109.85 cm. The Minneapolis Institute of Arts. This was the first Schiele painting to enter a U.S. museum.



St. Etienne's first truly successful Schiele show took place in 1957. For the first time, American-born collectors came calling, as did the Museum of Modern Art. Thrilled, Kallir offered MoMA's director, Alfred Barr, any oil in inventory as a gift. Barr demurred, saying that Schiele was only interesting as a draughtsman. So my grandfather gave the museum a selection of works on paper.

Kallir recognized that museum support was crucial if he ever wanted artists like Klimt and Schiele to be properly appreciated and understood by the American public. When the museums were not willing or able to buy, he gave them the works.

My grandfather's staunchest ally in the museum community was Thomas M. Messer, a young Czech émigré who in the late 1950s was director of the

Institute of Contemporary Art in Boston. With a pre-existing affinity to Austrian culture, Messer visited the Galerie St. Etienne, and Kallir convinced him to collaborate on a Schiele exhibition. That show, Schiele's first at an American museum, opened in Boston in 1960 and subsequently traveled to four additional venues.

“Undaunted, Kallir in 1941 mounted Schiele's first American one-man show. Drawings were priced at \$20, watercolors at \$60. Despite values that seem ludicrous by today's standards ..., only one work sold—a small oil for \$250 ...”

When, several years later, Messer was appointed director of the Guggenheim, Kallir was the first to congratulate him. And then, my grandfather promptly suggested that the Guggenheim mount a Schiele show.

The exhibition took place in 1965, and also included works by Gustav Klimt. With a total of 74 oils and 84 works on paper, it remains the largest dual presentation of the two artists ever mounted in the U.S., and it instantaneously cemented their reputations.

As a gesture of thanks, my grandfather gave the Guggenheim the first Schiele painting he had ever bought, *Portrait of an Old Man* (FIG. 7).

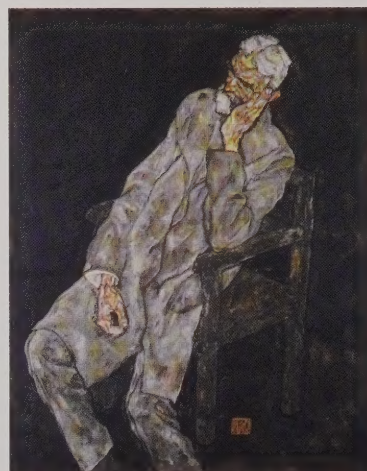


FIGURE 7. EGON SCHIELE. *Portrait of an Old Man (Johann Harms)*, 1916. Oil on canvas, 138.4 x 108 cm. The Solomon R. Guggenheim Museum, NY. Partial Gift of Dr. and Mrs. Otto Kallir. This was the first Schiele painting bought by Otto Kallir.

It is hugely ironic that Hitler's campaign against degenerate art seeded the world with works by German and Austrian modernists, in the long run actually fostering international appreciation of their achievements. The works that my grandfather and other refugees brought to the U.S. created a market that would not otherwise have existed.

At the same time, my grandfather was acutely aware that not all Jews had been as fortunate as he. He knew that many refugees had been forced to abandon their art, and that, to the extent it could now be found, the Austrians often impeded its return. Austrian law grants clear title to a good-faith purchaser after three years of uncontested possession. Works sold at public auction were automatically exempted from the Austrian restitution process, as were works acquired directly from Jews, unless it could be proved that the price was too low. Even when works were restituted, refugees living abroad were not automatically granted export licenses. This often led to a *quid pro quo*, in which the refugee "donated" part of his or her collection to the Austrian State in exchange for permission to export the rest.

My grandfather, with extensive connections in the refugee community and renewed contacts in the post-war Austrian art world, undertook protracted efforts to help collectors recover their misappropriated art. He had at best mixed results: Alma Mahler got back a Kokoschka portrait, but was denied her most valuable painting, a Munch landscape. The family of the composer Johann Strauss got back some of his manuscripts — in exchange for donating the rest to the City of Vienna.

PORTRAIT OF WALLY

And then there was Lea Bondi.

Lea Bondi, proprietor of the Galerie Würthle until 1938, owned Schiele's portrait of his lover, Wally Neuzil (FIG. 8).

After the *Anschluss*, Würthle was "Aryanized" by the Nazi art dealer Friedrich Welz.

Then, shortly before Bondi and her husband were due to emigrate, Welz paid them a visit and demanded Bondi give him *Portrait of Wally*. "I explained that the picture was my private property and had nothing to do with Würthle," she later recounted. "He would not stop pressuring me in the disagreeable manner common at that time, until my husband ... said, 'Give it to him already. We may want to leave as soon as tomorrow. Don't make difficulties. You know what he can do.' And so [Wally] came into the possession of Welz."

After the war, Welz was arrested with a trove of looted art. *Wally*, tentatively (and mistakenly) identified as the property of another Nazi victim, Heinrich Rieger, was sent to the Belvedere in Vienna for processing. *Wally* ended up being wrongly included in a group of paintings that was restituted to Rieger's heirs and then almost immediately purchased from them by the Belvedere.

In 1953 an avid young Austrian collector named Rudolf Leopold traveled to London to hunt for art in refugee collections. He met Lea Bondi and asked her if she had any Schieles. She told him she was trying to locate *Portrait of Wally*, and he informed her that it was hanging in the Belvedere. Bondi then asked Leopold to help her retrieve the painting. Instead, he acquired it from the museum for his own collection.

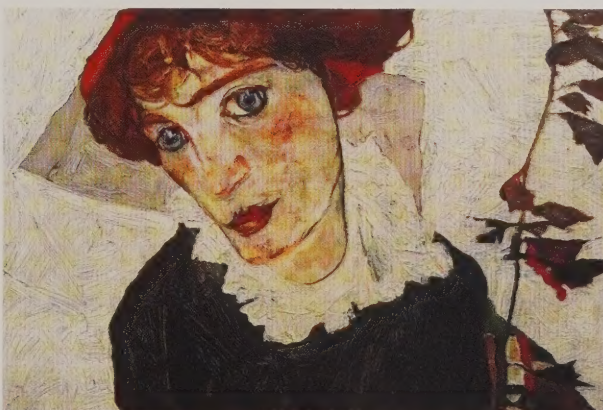


FIGURE 8. EGON SCHIELE. *Portrait of Wally*, 1912. Oil on panel, 32 x 40 cm. Coll. Leopold Museum, Vienna. This painting was the subject of a 12-year legal battle.

As soon as Bondi learned what had happened, she had her Viennese lawyer contact Leopold. But he was not about to give *Wally* up, and Bondi was loathe to file suit. She feared she would have no chance against Austria's largest museum and most powerful collector. "I have the feeling that everybody in Vienna is for Leopold and nobody want[s] to touch him," she commented bitterly. "I have no confidence in the Austrian judges and also the many witnesses I have."

In 1966, Bondi appealed to my grandfather for help, but by then the three-year statute of limitations had passed. Kallir's Austrian lawyer told him the situation was now hopeless.

Bondi died in 1969 without ever recovering *Portrait of Wally*. But in one of her letters to my grandfather she suggested that delaying legal action might eventually turn out to have been the right decision. "If a *Prozess* [that is, a lawsuit] is lost, it is finished for all times," she opined. "Without doing it, it remains open for all time."

In 1994 Rudolf Leopold made a complicated deal that transferred title in the bulk of his collection, including *Portrait of Wally*, to a new, state-financed museum. Three years later, in 1997, *Wally* was sent to New York for an exhibition, "Egon Schiele: The

Leopold Collection, Vienna," at the Museum of Modern Art. Much had changed since Lea Bondi's death. Schiele had become world-famous. And, equally important, people were far more aware that a great deal of art stolen during the Nazi era had never been returned to its rightful owners.

Since first reading my grandfather's correspondence with Lea Bondi in the early 1980s, I had repeatedly tried to get journalists to cover the story. And I had repeatedly been told that the story was not important enough. I had also put Lea Bondi's heirs in touch with an Austrian attorney, who echoed the earlier advice of my grandfather's lawyer: it was too late.

I was not, therefore, thinking that there was a chance the Bondis could ever get *Wally* back when I approached a *New York Times* reporter, Judith Dobrzynski, at the MoMA opening in the autumn of 1997 and told her the story. I was merely interested in publicizing the truth.

Dobrzynski's article, which appeared in the *Times* on December 24, 1997 (**FIG. 9**), unleashed an unanticipated cascade of events. On January 7, 1998, just hours before the Leopold exhibition was due to be shipped back to Vienna, the Manhattan District Attorney, Robert Morgenthau, subpoenaed *Portrait of Wally* and another suspect Schiele in the collection, *Dead City III* (**FIG. 10**).

To facilitate research into the provenances of the two paintings, Austria's Minister of Education opened government archives that had heretofore been inaccessible.



FIGURE 9. Copy of front page of the Arts Section in *The New York Times*, December 24, 1997, showing Judith H. Dobrzynski's article about Rudolf Leopold.



FIGURE 10. EGON SCHIELE. *Dead City III*. Oil and gouache on wood, 37.1 x 29.9 cm. Leopold Museum, Vienna. Claimed while on loan to MoMA but later returned to Vienna.

Based on this new information, the progressive Austrian newspaper *The Standard* launched a seven-part series on the nation's post-war restitution practices. Several days after the first of these articles appeared in February 1998, the Minister of Education announced the formation of a commission to study the provenances of art in Austrian state museums. And on September 25, 1998, the Austrian Parliament passed a formal act authorizing the return of looted art in federal institutions. This act would lead to an unprecedented series of spectacular restitutions, including that of the Rothschild collection, and, after a long, drawn-out legal battle, five Klimt paintings that had once belonged to Ferdinand Bloch-Bauer.

The only problem was that the Austrian restitution act of 1998 did not apply to the Leopold Museum, because it was a private foundation, not a state institution. *Wally* was stuck in America, where the case would wind its way through the courts for a dozen years.

Ultimately, the U.S. courts ruled that *Wally* was stolen property, and remained such under Austrian law, because both the Belvedere and Leopold had been informed of Bondi's claim within three years of acquiring the painting, and had made no attempt to investigate its provenance. With the case set to go to trial on July 26, 2010, the Leopold Museum settled with the Bondi heirs for \$19,000,000, the approximate fair market value of the painting.

Wally was a landmark case, establishing that even after the passage of so many decades, it is still possible to justify the restitution of Nazi looted art. But *Wally* was also a highly unusual case. First of all, because of my grandfather's 1930 catalogue raisonné, there is clear documentation of the painting's pre-war ownership. Second, Bondi's letters to my grandfather provide a first-hand account of the actual theft. And third, the actions of Leopold and the Belvedere with regard to the acquisition are also quite well documented. Seldom in restitution cases is the evidence so complete and unambiguous.

THE FRITZ GRÜNBAUM COLLECTION

To give you an idea of the kinds of problems one more typically encounters in current restitution cases, let us turn to *Dead City III*, the other Schiele painting subpoenaed by Morgenthau.

Shortly after Dobrzynski's initial *Times* article appeared, *Dead City* was claimed by the Reif family, who presented themselves as the heirs of Fritz Grünbaum, a Schiele collector who had perished in Dachau. Subsequent research into the provenance of *Dead City* revealed that it had been sold in the 1950s to the Swiss gallery Gutekunst and Klipstein by Mathilde Lukacs, an Austrian refugee living in Belgium. Further investigation then disclosed that Lukacs was in fact Grünbaum's sister-in-law, and one of his heirs. The Reifs, far more distant relatives, had no legal claim to the Schiele, and *Dead City* was sent back to the Leopold Museum.

There things might have ended, were it not for the fact that Fritz Grünbaum had owned 81 works by Schiele, in addition to hundreds of pieces by other artists. And Lukacs had sold a total of 71 Schieles to or through the Swiss gallery. At current prices, there was a fortune to be made if these works could be successfully claimed.

And so the Hoerner Bank, a German bank that specializes in tracking down heirs in exchange for 1/3 of the net profits upon recovery of an estate, set out to locate the true heirs of Fritz Grünbaum. Eventually, Hoerner's investigators found a distant relative of Grünbaum's wife in New York, and an heir of the collector's sister in the Czech Republic.

In 2005, another of the Schieles that Lukacs had sold to Gutekunst & Klipstein was consigned to auction by the collector David Bakalar (FIG. 11). The



FIGURE 11. EGON SCHIELE. *Seated Woman with Bent Left Leg (Torso)*. Gouache and black crayon, 35.1 x 25.5 cm. The subject of a long and unsuccessful ownership claim against David Bakalar.

Hoerner Bank's lawyer lodged a claim on behalf of the two recently discovered Grünbaum heirs, and extensive litigation ensued.

As a result of that litigation, and of separate investigations by provenance researchers in Austria, we now know a number of facts about the Grünbaum collection.

Like all Jewish assets, the collection was inventoried by the Nazis in July 1938. Subsequently, the art was cleared for export by the National Monuments Office and sent to a shipper, Schenker, in Vienna. It is evident that Lilly and Fritz Grünbaum hoped to emigrate to Belgium, where Lilly's brother, Max Herzl, was already established as a diamond dealer. Max twice secured Belgian visas for the couple, but Lilly refused to go without her husband, who had been arrested shortly after the *Anschluss*. He died in Dachau in January 1941.

"The questions that are being raised today about Nazi looting are long overdue. But in some cases, it is too late to answer them."

Lilly Grünbaum was not deported until October 1942. Had the art collection still been at Schenker's when she was killed, it would almost certainly have been taken by the Gestapo, but there is no evidence that this occurred.

Meanwhile, Lilly's sister, Mathilde Lukacs, and her husband, Sigmund, had managed to flee to Belgium. Their household property, including eleven oil paintings, three watercolors, eight prints and three drawings by unidentified artists, was shipped to Belgium by Schenker in the summer of 1938.

The couple began making regular trips back to Vienna in 1948. In 1952, Mathilde wrote to Eberhard Kornfeld, the director of Gutekunst & Klipstein, to inquire about selling some art. Between

1952 and 1956, she sent or brought Kornfeld a total of 120 works (including the 71 Schieles) in seven batches. Kornfeld either offered them at auction or purchased them outright.

None of the extant documents suggests that the Grünbaum collection was ever appropriated by the Nazis. Indeed, both the New York courts and a commission of Austrian legal scholars found that Lukacs' evident possession of some of the works after the war was de facto proof that these works had *not* been looted. For this reason and also the heirs' delay in bringing their claim, which prejudiced Bakalar, the New York judge concluded that Bakalar had good title to the disputed Schiele.

The Lukacs/Grünbaum case illustrates the difficulty of establishing, so many years after the war, what really happened to the art owned by the victims of Nazi persecution. Records are incomplete, witnesses no longer living. The work of Egon Schiele, a "degenerate artist," had little value and was not easy to sell during the Nazi years, but unframed works on paper were relatively easy to hide, store, or transport. Even in the face of death, Jews sometimes found ways to preserve their art and pass it along to relatives or friends.

In the decades since 1945, Schiele's work has experienced a roughly thousand-fold increase in value, a rate of appreciation unequalled by almost any other modern master. While today's high values encourage Holocaust-related claims, the extremely low value of Schiele's work during and immediately after World War II means that those claims can be difficult to substantiate. Informal transactions among family members were seldom documented or questioned. Schiele's works on paper, often repetitive in subject, were rarely catalogued in an identifiable manner until the 1970s.

The questions that are being raised today about Nazi looting are long overdue. But in some cases, it is too late to answer them.

• • •

VIENNA 1900

ALESSANDRA COMINI = AC

SHARON FLESCHER = SF

JANE KALLIR = JK

ERIC R. KANDEL = EK

Q & A

SHARON FLESCHER (SF): Let us start with the panelists asking questions of each other.

Q ALESSANDRA COMINI (AC): Eric, could you explain bottom-up, top-down perception in more detail?

A ERIC KANDEL (EK): Bottom-up perception is the inborn capability of perceiving the world, of perceiving perspective and color and form. This process is not learned. We're born with the capability. The extraordinary accomplishment of Renaissance artists was in figuring out how to depict that capability on the canvas. Masaccio's *Holy Trinity* in Florence, for example, shows a dramatic, virtual hole-in-the-wall perspective. Artists of this period began to realize how to place objects in front of each other to recreate what the brain does automatically. But the top-down process is also important because while you and I may perceive the same things bottom-up, we have different life experiences and may have very different associations with art and differing levels of sophistication.

AC: Thank you, that helps. And yet I'm thinking of a little boy whom I asked to draw his father, and he drew the shoes and then the legs and he continued bottom-up, so I wonder ...

Q SF: Jane, some art restitution cases are based on the works having been sold under duress, and one of the criteria for duress is whether a work was sold for well below market value. If market prices in the U.S. in the 1940s were so low for Schiele, were they quite as low for Klimt?

A JANE KALLIR (JK): Even lower.

Q SF: Even lower than \$20? Then how is a comparison for a duress sale made? What is the standard?

A JK: Duress cases are very difficult. I have problems with many of them because it's nearly impossi-

ble to determine what would have been a fair market value under those circumstances. People are shocked to hear, "I only got ten dollars for that Schiele." And they react, "Well, of course you were cheated." But not necessarily so. Further complicating these cases are situations where a collector had to choose between selling the art and emigrating, between selling the art and saving himself and his family. Let's say you find someone to pay the \$10, and \$10 is the real value. And the choice is between selling the art and living or not selling it and having it stolen by the Nazis. Shades of gray color these transactions, but often people today want to see them in terms of black and white.

EK: I hate to disagree with Jane, who's much wiser in many things than I am, but I was there. Jane's grandfather was extremely fortunate to have a colleague in his gallery that he trusted and who was extremely honorable to him. Most Jews in our position did not have the support of non-Jewish friends.

JK: Unfortunately, that's true. That's not disagreeing with me.

EK: That was only the first part of my comment. I could see somebody offering \$10. A million is a ridiculous amount. The borderline is very difficult to define. On Kristallnacht, November 9, 1938, we were kicked out of our apartment. When we returned, everything of value was gone, even my toy car that might have been worth one dollar. I could see somebody slipping a few dollars to us afterwards and thinking that was compensation. It can be very complicated.

JK: It is very complicated and, unfortunately, not many people survive as witnesses. But your toy car has not appreciated in value.

EK: My mother's fur coat was gone, but it also may not have appreciated. We didn't have any art; we

were very poor. Yet I could see things like that happening. Everyone was kicked out of their apartment, so people with resources lost much more in absolute value.

JK: My grandfather lost his car. He had just bought a new car, and the Nazis took it.

SF: Thank goodness they didn't like the Schieles!

JK: No, they didn't like Schiele.

Q Dr. Kandel, I've been doing a lot of work on synesthesia. Could you explain the connection between synesthesia and mirror neurons?

A EK: Synesthesia has nothing to do with mirror neurons per se. We mirror one sensation with another, not one movement with another. Synesthesia is perceptual rather than motor.

Q How did anxiety and the sociopolitical context shape the art of this period, and how did the artists shape cultural transition? I believe artists are agents of cultural resilience, and the story about the value of these works of art over time speaks to the human assessment of how precious these objects are, how priceless they are in terms of market price. But we also have an unconscious bottom-up response to art.

A EK: Artists are marvelous barometers of what's going on in the world, and they certainly were at that time. If we compare the Austrian and German Expressionists, we see they were quite different. The German artists were less concerned with inner anxiety than with the outward response to war. Like many people, they viewed war as a social rejuvenator and went to war enthusiastically. Kirchner and Beckmann both thought this way but ended up having nervous breakdowns. They didn't realize that they kill people at the front. War is not a game. They were very much concerned with that. In the paintings of the Austrian Expressionists, we do not see overt references to war, but we see the inner experience, the anxiety. Although Kokoschka denied having read Freud and said that he'd discovered the unconscious independent of Freud, to me, that is inconceivable. He associated with intellectuals — like Loos — who would have read and

spoken of Freud. Unconscious processes were part of the intellectual currency at the time. Carl von Rokitansky believed you could not make a clinical diagnosis without going deep into the body to see what was going on. His metaphor was "truth is hidden from the surface." We find this same theme in Kafka, the Schiele of literature.

"Although Kokoschka denied having read Freud and said that he'd discovered the unconscious independent of Freud, to me, that is inconceivable."

Q Jane, I was interested in your comments about how the circumstances were different for everybody. Some people who were able to leave Europe left with nothing, while others were able to actually make money whether they were Jewish or not. Paul Graupe, for example, prospered because he was selected by the Nazi regime to be the main auctioneer in Germany for the forced sales.

A JK: I don't know that anybody made money from the Holocaust except the Nazis, but there were people who started out wealthy. People had variable resources. Some got out sooner, others, later. These things factored into one's fate and, to some extent, the fate of one's property. ... Graupe was basically a Jewish collaborator.

EK: Jane made a good point. The Nazi policy changed over time. When Hitler first invaded Austria, the Nazis did not want to kill Jews. They just wanted them to leave; therefore, it was much easier for them to get out. People with resources could flee with a substantial amount of their household belongings and resources. Within a relatively short period of time, this became much more difficult.

Q Dr. Kandel, my question is about very young children being able to discern the different faces of monkeys and how we can't do that as adults. Is there a way to alter that process?

A EK: Are you asking why it is more difficult to recognize faces with time? Young children have an unbelievable capability to do this, and there's a

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critical period for it, when they are about three to four years old. After that, they lose this capability.

Q Can you prevent them from losing it?

A EK: The answer is “no” as far as one knows. There’s a critical period, a fixed period, for many things. Language acquisition, for example. If you immigrate to the United States after age 13, you can master the English language, but you never master the accent. For another example, in adolescence it is much easier to get on drugs than it is later on. People who start smoking in their thirties or forties are very unlikely to go from smoking to heroin or cocaine, but the brain of an adolescent smoker looks like it’s on nicotine all the time, and nicotine primes people for other drugs. So the brain of an adolescent smoker is much more predisposed to other kinds of experimentation. Thank God that predisposition disappears soon thereafter.

Q Jane, I’m writing my thesis on the market for restituted works and why some of them reach astronomical prices. Do you have any thoughts on why they reach these prices?

A JK: When works are restituted out of public institutions, like the five Bloch-Bauer paintings, including the golden *Adele* that Ronald Lauder purchased, and the four that were auctioned at Christie’s, or the Kirchner that was taken out of the Berlin Museum that Mr. Lauder also bought, we see works coming to market of quality, caliber and fame that you just don’t normally see these days for classic modern art material. It’s not true that all restituted art brings record prices, but auction houses are very good at hyping the works that do.

Q Are there artists from that time period who were not acknowledged and could still be acknowledged?

A JK: Why certain artists get recognized, get appreciated, get into the museums and others don’t is almost an unanswerable question. Sometimes it’s a simple answer. The ones that get into museums actually are better. They’ve been vetted. Many people have seen and appreciated their work. There’s a reason that a Schiele painting today is worth \$19 million instead of \$250, and it’s because he was a great artist. Now, that doesn’t mean that

there can’t be other great artists who remain undiscovered, but the more time passes, the more people have an opportunity to see and evaluate the works of an artist aesthetically, not monetarily, I guess the less chance there is that somebody older and grayer will suddenly emerge from the shadows.

Q I spent a lot of time in the Neue Galerie looking at the Kokoschka portraits and wondering where the hand gesticulations came from. Apparently, they are rooted in psychology, more specifically, in photographs of patients in mental asylums. In Kokoschka’s portraits, hand gesticulations, like faces, show the subjects’ personalities. Why were they used during this period when it seems they had not been used before or after in such an exaggerated manner?

A EK: Jean-Martin Charcot, who developed and popularized hypnosis, had a tremendous influence on Kokoschka and Schiele. Charcot had subjects assume odd postures while they were under hypnosis, and photographs of this were widely distributed, including in Vienna.

AC: There was also the influence of silent film. Pantomimes in silent film inspired these young artists, and they mimicked what they saw. Once silent film caught on, it presented them with a whole new world of gesticulation. Also, when the Viennese police photographed criminals, it was customary for them to photograph their hands — the doers of the crime — as well as their faces. In any Viennese police photograph from the period, the hands are involved.

JK: As the most eminent art historian here, Alessandra, you would confirm that hands have always been part of portraiture, but these wildly distorted gestures are typical of the period.

AC: Not simply the hands, but all the finger gestures are important to Schiele and Kokoschka.

EK: The reason the face is so special is that we focus on faces, but it’s not that the rest of the body isn’t important.

SF: This is a good place to end. Please join with me in thanking our three speakers for their fabulous talks.

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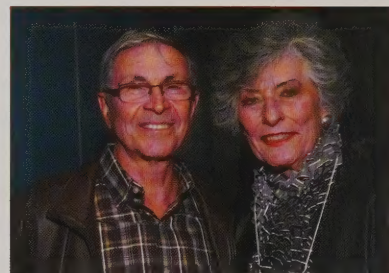
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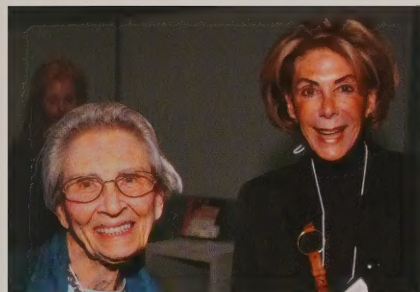
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VIENNA 1900



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Ellen Liman (left) and Kim Bendheim.



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Vol. 15, no. 2, \$10; nos. 3 & 4, \$15
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The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 44.207.841.5780. From the U.S., add the prefix 011.

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STOLEN ART*

ASIAN ART

The following 20 items by unknown artists — assembled in 1863 by Empress Eugenie for her Chinese Museum at the Château de Fontainebleau — were snatched from display cases at the museum in an early morning burglary on March 1, 2015. *L15.1 and *L15.194:

1. **Bird with Nest** (18th century). Carnelian.
Ht: 46.99 cm (18 ½"). *L15.1.



2. **Bowl**. (Chinese, 18th century). White jade.
Ht: 7.01 cm (approx. 2 ¾"). *L15.1.



3. **Bowl** (Chinese, 18th century). White jade.
Ht: 7.01 cm (approx. 2 ¾"). *L15.1.

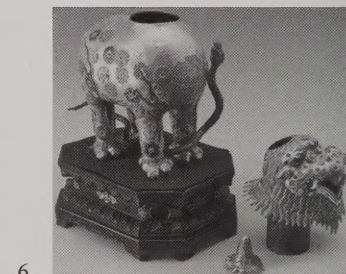


4. **Chimera** (Chinese, 18th century).
See color photo on inside back cover.

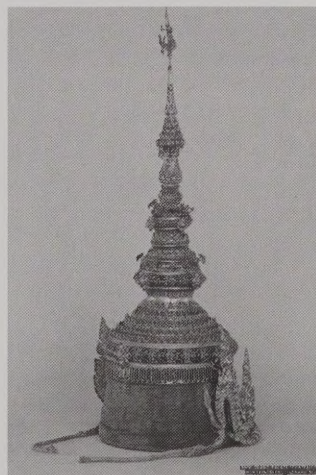
5. **Chimera** (Chinese, 18th century). Coral.
11 x 15.01 cm (approx. 4 ¼" x 6"). *L15.1.



6. **Chimera** (Chinese, 18th century).
A pair. Bronze, enamel, gold. *L15.1.



7. **Crown of the King of Siam** (Thai, mid 19th century). Gold filigree, enamel, silk, and precious stones. Ht: 59.99 cm (approx. 23 ½").
The King of Siam presented this crown to the Emperor Napoleon III in 1861. *L15.194.



8. **Horse** (Japanese, 17th century). Bronze. *L15.1.



9. **Man on Horseback**. (Japanese, 17th century).
Bronze. 21.01 x 16 cm (approx. 8 ¼" x 6 ¼").
*L15.1.



*Numbering for the year 2015 Cumulative Index of Stolen Art begins with this issue.

STOLEN ART (cont.)



11

10



10. *Offering Bowl* (Thai). Silver with gold and silver gilt. Ht: 24.99 cm (approx. 9 ¾"). *L15.1.



12

11. *Pair of Vases* (Chinese, 18th century). Porcelain. Ht: 22 cm (approx. 8 ¾"). *L15.1.

12. *Perfume Burner* (Chinese, 15th century). Bronze. Ht: 15.01 cm (approx. 6"). *L15.1.



13

13. *Rock with Figures*. (18th century). Gray jade. Ht: 40.01 cm (approx. 15 ¾"). *L15.1.



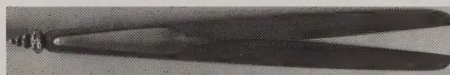
14

14. *Sabre* (Japanese). Steel and gold. 85.5 x 8 cm (approx. 33 ½" x 3 ¼"). *L15.1.



15

15. *Shears* (Thai, 19th century). Steel, enamel, gold, precious stones. 32.79 x 4.5 cm (approx. 13" x 1 ¾"). *L15.1.



16

16. *Shears* (Thai, 19th century). Steel, gold, enamel, precious stones. 35 x 4.5 cm (approx. 13 ¾" x 1 ¾"). *L15.1.



17

17. *Tibetan Mandala Box* (Chinese, Qianlong period, 1736-1795). Gold filigree and repoussé, coral, pearls. Ht: 24.99 cm (approx. 9 ¾"). *L15.194.



18



19



20

18. *Vase* (Chinese, 18th century). Bronze, porcelain, gold. Ht: 46 cm (approx. 18"). *L15.1.

19. *Vase* (Chinese, 18th century). Porcelain. Ht: 46.99 cm (18.5"). *L15.1.

20. *Vase with Lid* (Thai, mid 19th century). Gold and enamel. Ht: 28.19 cm (approx. 11"). *L15.1.

PAINTINGS

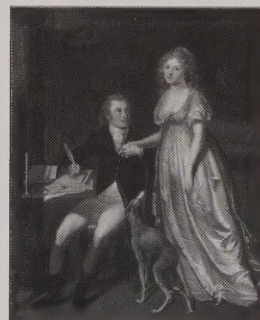
21. LOUIS BEYSSON (French, 1856-1912). *Sur le quai de la gare*, 1890. Oil on canvas. 24 x 35 cm (approx. 9 ½" x 13 ¾"). Signed l/l. *L15.105. Stolen from the Musée Paul Dini, Villefranche-sur-Saône, France on January 25, 2015.

21



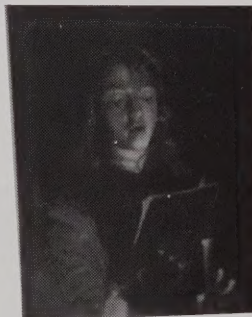
22. DANIEL NIKOLAUS CHODOWIECKI (Polish-German, 1726-1801). *Landrat Karl von Zinnow and his wife Caroline, born Hautschek*, 1797. Oil on copper. 38.71 x 30.51 (approx. 15 ¼" x 12"). Signed on the bureau: Rincklage fec. 1797 / Inscribed on the verso in the hand of the commissioner of the painter: Karl von Zinnow Landrath des Königsberger Kreisdirektor in der Neumark hat sich in seinem fünfundzwanzigsten Jahre 1797 im Junius mit seiner Gattin von dem Herrn Rincklage in Landsberg an der Warthe So für sich malen lassen. Er ware Leutnant und Adjutant im Dragoner Regiment von Katte. ... *L14.1311. Stolen from a private residence in Glöbusch, Germany on June 3, 1974.

22



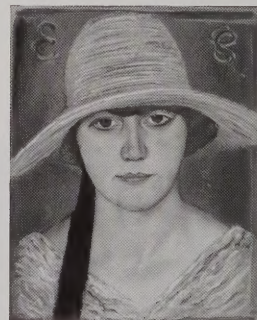
23. CIRCLE OF ADAM DE COSTER (Flemish, 1586-1643). *A Youth Singing by Candlelight*, 1600. 71.81 x 53.8 cm (approx. 28 ¼" x 21"). *L15.60. Stolen from a private residence in West Derby, England in 1991.

23



24. BORIS DMITRIEVICH GRIGOREV (Russian, 1886-1939). *Portrait of a Lady in a Hat*, 1926. Oil on canvas. 41 x 32.99 cm (approx. 16" x 13"). Signed. *L14.731. Stolen from storage in Moscow, Russia on February 6, 2009.

24



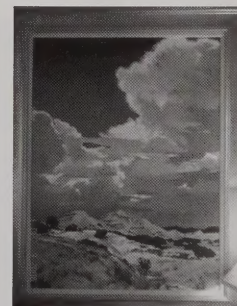
25. DIANA KESSELSCHMIDT (American, contemporary). *Portrait of Painter and Husband*, 2007. Oil on canvas. 60.96 x 91.44 cm (approx. 24" x 36"). Signed l/r. *L15.61. Stolen from a building in Nyack, New York on June 20, 2012.

25



26. Unknown Artist. *New Mexico Vertical Landscape*, c. 1980-2015. Acrylic. 101.6 x 76.2 cm (40" x 30"). *L15.103. Stolen from a private residence in Dallas, TX on September 22, 2014.

26



STOLEN ART (cont.)



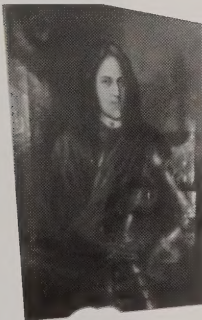
28



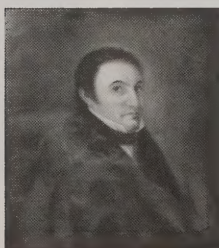
27



30



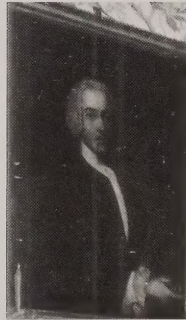
32



34



29



31



33

27. MARY WATSON (American, 20th century). *The Crucible*, c. 1970s. Paint and collage on canvas. 3 x 5 cm (approx. 1 ¼" x 2"). *L14.1231. Stolen from a private residence in Ada, Oklahoma on November 17, 2014.

28. XU JIANGUO (Chinese-American, contemporary). *Abstract -2*, c. 1980-2000. Oil on canvas. 59 x 38.99 cm (approx. 23 ¼" x 15 ¼"). Signed. *L14.706. Stolen from a business in Shanghai, China on January 1, 1996.

The following six paintings were stolen from a private residence in Johannisberg, Germany on December 21, 2014. *L15.42:

29. *Portrait of Anne of Austria* (Rococo, 18th century). Oil on canvas. Large. Image is cropped.

30. *Portrait of Baron Wilhelm Ludwig von Eschwege*. Oil on canvas. 100 x 78.99 cm (approx. 39 ½" x 31").

31. *Portrait of Ernst von Eschwege*, c. 1801-1825. Oil on canvas. 46 x 42.01 cm (approx. 18 ¼" x 16 ½").

32. *Portrait of a Knight (von Eschwege)*. Oil on canvas. 100 x 79 cm (approx. 39 ½" x 31").

33. *Portrait of Therese d'Angot* (early 19th century). Oil on canvas. 64.01 x 54.99 cm (approx. 25" x 21 ½").

34. *Portrait of the Wine Merchant d'Angot*, c. 1775-1799. Oil on canvas. 81.99 x 67.01 cm (approx. 32 ¼" x 26 ½").

STOLEN ART ALERT®

The following three paintings were stolen from Trinity College, the University of Toronto between January 20, 2015 and February 10, 2015:

35. YEE BON (Chinese, 1905-1995). *Credit River*, 1931-1932. Oil on canvas. 29.5 x 35.5 cm (approx. 11 ½" x 13 ¾"). *L15.198.



35

36. WILLIAM E. DEGARTHE (Finnish/Canadian, died 1983). *Morning at Peggy's Cove*, 1956. Oil on panel. 16 x 21 cm (approx. 6 ¼" x 8 ¼"). *L15.199.



36

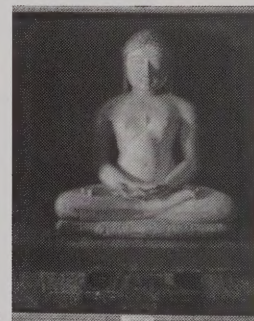
37. AFTER FRANCESCO GUARDI (Italian, 1712-1793). *Church of Santa Maria della Salute*. Oil on canvas. 35.61 x 44.4 cm (approx. 14" x 17 ½"). *L15.158.



37

The following three paintings were stolen from a gallery in Rock Hall, MD on January 6, 2014. *L14.1329:

38. JACOB DOOIJEWAARD (Dutch, 1876-1969). *Jain Tirthankara*, 1931. Oil on canvas. 78.74 x 68.58 cm (31" x 27"). Signed u/l.



38

39. MARJORIE JANE REED (American, 1915-1996). *Butterfield Stage Coach*, c. 1945-1955. Oil on canvas. 60.96 x 91.44 cm (24" x 36"). Signed center l/l.



39

40. FREDERICK JUDD WAUGH (American, 1861-1940). *Oriental Still Life*. Oil on fiberboard. 66.04 x 90.17 cm (26" x 35.5"). Signed l/r.



40

STOLEN ART (cont.)



42



41

The following four paintings were stolen from a private residence in Edinburgh, England on November 19, 2014. *L14.1249.

41. **TERRY BRADLEY** (Irish, born 1965).

Love, 2000. Oil on canvas. 76 x 51 cm (approx. 30" x 20"). Signed l/l.

42. **WILFRED LANG** (Chinese-American, born 1954). *Saffron Waters*, 2000. Oil on canvas. 108 x 108 cm (approx. 42 ½" x 42 ½"). Signed.



43

43. **ANNA RAZUMOVSKAYA** (Russian, contemporary). *Pensee III*, 2000. Oil on canvas. 30 x 30 cm (approx. 11 ¾" x 11 ¾"). Signed.

44. **GABRIELA VILLARREAL** (Mexican, born 1970). *Abstract II*, 2000. Oil on glass. 49.99 x 59 cm (approx. 19 ¾" x 23 ¼"). Signed l/r.



44



46



45

The following three paintings were stolen from a private residence in Donard, Ireland on October 22, 2014. *L14.1144.

45. **PAUL HENRY** (Irish, 1877-1958).

Landscape with Cottage, c. 1930s. Oil on canvas. 35.51 x 40.49 cm (approx. 14" x 16").

46. **SIR JOHN LAVERY** (Irish, 1856-1941).

Portrait de Femme au Chapeau (*Portrait of Lady with Hat*), c. 1900-1920. Oil on panel. 42.8 x 24 cm (approx. 16 ¾" x 9 ½"). Signed l/l: "to/ Egon Hessling J Lavery".



47

47. **JACK BUTLER YEATS** (Irish, 1871-1957).

The Fern in the Area, 1950. Oil on canvas. 42.01 x 54.99 cm (approx. 16 ½" x 21 ½"). Signed.

STOLEN ART ALERT®

The following two paintings were stolen from a business in Nordrheinwestfalen, Germany on January 16, 2015. *L15.117. See also item nos. 55; 65-70; 72-74:

48. GABRIELE MÜNTER (German, 1877-1962).
The House, 1909. See color photo on inside back cover.

49. LUDWIG MUNTHE (Norwegian, 1841-1896).
Thaw in the Lower Rhine, 1880. Oil on canvas.
Signed. (No dimensions given.)



49

The following two paintings by WILLIAM BROWN (Canadian, 1953-2008) were stolen from a gallery in Howle Hill, England on January 18, 2013. *L15.71:

50. *The Inner Man*, 2000. Acrylic on canvas.
150.01 x 122 cm (approx. 59" x 48"). Signed.

51. *Newport/Approaching the Storm*, 2003-2004.
Acrylic on canvas. 116.99 x 46.06 cm (approx.
46" x 75 3/4"). Signed.



50

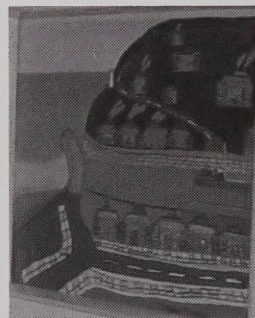


51

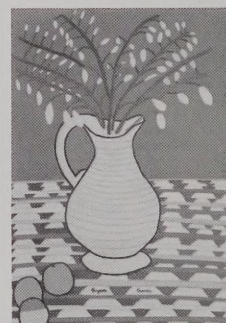
The following two paintings by BRYAN PEARCE (British, 1929-2007) were stolen from a private residence in Cornwall, England on January 23, 2015. *L15.112.

52. *Porthleven*, c. 1960. Oil on board. 54.51 x 76.5
cm (approx. 21 1/2" x 30"). Signed l/r.

53. *White Jug and Catkins*, c. 1960. Oil on board.
76.5 x 54.51 cm (approx. 30" x 21 1/2").
Signed lower middle.



52

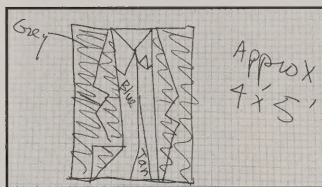


53

STOLEN ART (cont.)

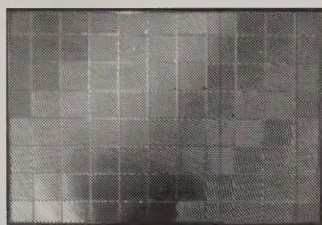
MIXED MEDIA

54



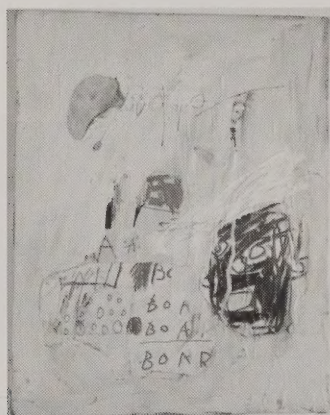
54. CARROLL DUNHAM (American, 1949). *Particular Aspects (one)*, 2003. Mixed media on linen. 121.92 x 152.4 cm (48" x 60"). Signed. *L15.7. Stolen from an art warehouse in New York, NY on June 4, 2012. Note that the image was drawn by owner as they have no photo of the work.

55



55. HEINZ MACK (German, born 1931). *Nürnberg*, 1974. Embossed aluminum sheet. 48.01 x 68 cm (approx. 19" x 26 3/4"). Signed. *L15.117. Stolen from a business in Nordrheinwestfalen, Germany on January 16, 2015. See also item nos. 48, 49; 65-70; 72-74.

57



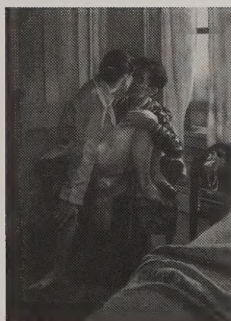
The following two paintings by JEAN-MICHEL BASQUIAT (American, 1960-1988) were stolen from an art warehouse in New York, NY on January 1, 1987. *L14.1140.

56. *Untitled*, 1981. See color photo on inside back cover.

57. *Untitled*, 1981. Mixed media on canvas. 35.51 x 27.89 cm (approx. 14" x 11").

WORKS ON PAPER

58



59



58. SIGMUND ABELES (American, 1935). *Their Kiss*, 1989. Pastel on paper. 162.56 x 121.92 cm (64" x 48"). Signed. *L15.13. Stolen from an art warehouse in New York City on January 29, 2014.

59. CHARLES BRONSON (English, contemporary). *Beast of Insanity*, 2000. Work on paper mounted on board. 20.32 x 53.34 cm (8" x 21"). *L15.81. Stolen from an exhibition in London, England on January 21, 2015.

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60. MAX ERNST (German, 1891-1976). *Landscape*. Black pen on paper. Signed l/r. 19 x 10.21 cm (approx. 7 ½" x 4"). *L14.939. Stolen from a gallery in Zurich, Switzerland on March 6, 2013. (No image provided.)

61. ARTURO FERRARI (Italian, 1861-1932). *Bridge of Sighs*, 1895. Watercolor on paper. 38.74 x 24.13 cm (15 ¾" x 9 ½"). Signed and dated l/r. *L15.55. Stolen from a gallery in Denver, PA between August 25, 2014 and November 25, 2014.



61

62. NATALIA GONCHAROVA (Russian, 1881-1962). *Spanish Fantasy*, 1916-1920. See color photo on inside back cover.

63. NORMAN LEWIS (American, 1909-1979). *Untitled (Study for a Painting)*, c. 1940. Gouache and watercolor on paper. 31.24 x 25.4 cm (approx. 12 ¼" x 10"). Signed l/r. Inscribed verso u/r: PB-8/ 12 ½ x 10. Inscribed l/l verso: Study for Painting. *L14.1129. Stolen from a private residence in Newark, NJ on May 1, 2007.



63

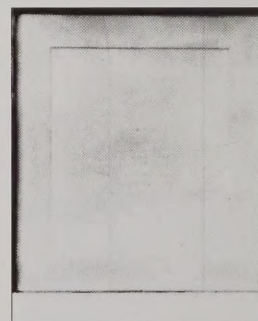
64. JAMES GLEN WILSON (Irish, 1827-1863). *Portrait of Thakombau (Fijian chief) Reclining*, c. 1850s. Watercolor on paper. 19.99 x 30 cm (approx. 8" x 11 ¾"). *L15.24. Stolen from a private residence in London, England on January 3, 1967.



64

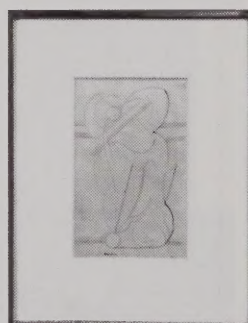
The following 6 works on paper were stolen from a business in Nordrheinwestfalen, Germany on January 16, 2015. *L15.117. See also item nos. 48, 49, 55; 72-74:

65. LUCIO FONTANA (Italian, 1899-1968). *Untitled*. Pencil on perforated paper. 43 x 37.01 cm (approx. 17" x 14 ½").



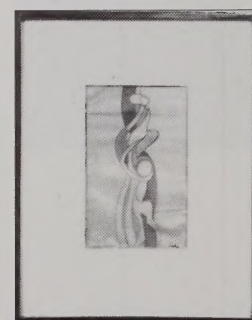
65

66. AUGUST HERBIN (French, 1882-1960). *Untitled*. Pencil on paper. 24.99 x 18.01 cm (approx. 9 ¾" x 7"). Signed.



66

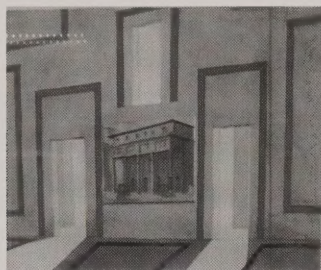
67. AUGUST HERBIN (French, 1882-1960). *Untitled*. Pencil on paper. 23.01 x 14 cm (approx. 9" x 5 ½"). Signed.



67

STOLEN ART ALERT®

STOLEN ART (cont.)



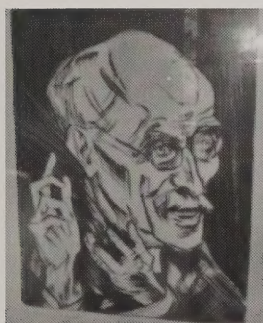
68

68. THOMAS HUBER (German, born 1955). *Untitled*, 2005. Watercolor on paper. 67.01 x 69.29 cm (approx. 26 ½" x 27 ¾"). Signed.



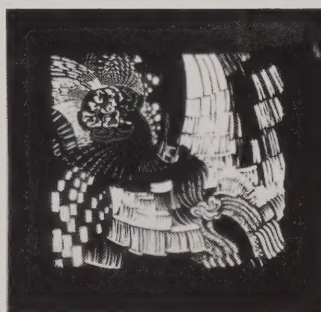
69

69. IMI KNOEBEL (German, born 1940). *Untitled*, 1972. Graphite on paper. A group of 6 images in white painted wood frames. Each measures 30 x 21.01 cm (approx. 11 ¾" x 8 ¼"). Signed.



71

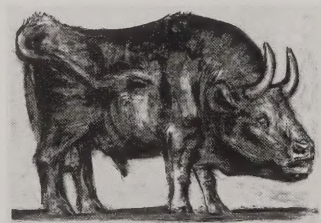
70. FRANTIŠEK KUPKA (Czech, 1871-1957). *Noir et Blanc*, 1921. Acrylic on paper. 34.01 x 38 cm (approx. 13 ½" x 15"). Signed.



70

PRINTS, ETCHINGS, LITHOGRAPHS

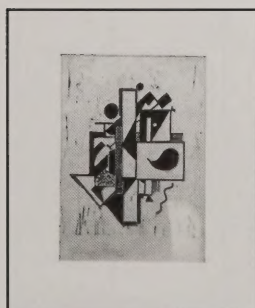
71. PETER AUGUST BÖCKSTIEGEL (German, 1889-1951). *Musik Prof. Lamping*, 1923. Etching. 55.4 x 42.8 cm (approx. 21 ¾" x 16 ¾"). Signed and dated l/r. *L15.79. Stolen from a gallery in Bielefeld, Germany on November 14, 2014.



72

The following 3 prints were among numerous works stolen from a business in Nordrheinwestfalen, Germany on January 16, 2015. *L15.117. See also item nos. 48, 49, 55; 65-70:

72. PABLO PICASSO (Spanish, 1881-1973). *Taurus Series*, 1946. Lithograph on paper. The image shown here depicts 1 of 11 different images of a bull. Each measures. 62.2 x 51.51 cm (approx. 24 ½" x 20 ¼"). Signed.



73



74

73. JEAN PUGNY (Russian/French, 1892-1956). *Composition*, 1922. Linocut on paper. 35 x 24.51 cm (approx. 13 ¾" x 9 ¾"). Signed l/l.

74. JEAN PUGNY (Russian/French, 1892-1956). *Composition*, 1922. Linocut on paper. 35 x 24.51 cm (approx. 13 ¾" x 9 ¾"). Signed l/l.

STOLEN ART ALERT®

The following five items were stolen from a gallery in Zurich, Switzerland on June 3, 2013.

*L14.939:

75. **MARC CHAGALL** (Russian/French, 1887-1985). *Le roi david*. Lithograph. 30.99 x 24.99 cm (approx. 12" x 9 ¾"). Signed l/r.



75

76. **JOAN MIRÓ** (Spanish, 1893-1983). *Le cassier*, 1969. Etching and aquatint. 89.99 x 68 cm (approx. 35 ½" x 26 ¾"). Signed l/r. Dupin 487.



76

77. **JOAN MIRÓ** (Spanish, 1893-1983). *L'Etrangle*, 1974. Etching and aquatint. 137.01 x 94.01 cm (approx. 54" x 37"). Signed l/r.



77

78. **JOAN MIRÓ** (Spanish, 1893-1983). *Oiseaux*. Etching and aquatint. 92 x 62.99 cm (approx. 36 ¼" x 24 ¾"). Ed. no. 43/75. Signed l/r. Dupin 526.



78

79. **PABLO PICASSO** (Spanish, 1881-1973). *Les bleus de Barcelone*. Folio with 12 reproductions of Picasso drawings. Inscriptions: to devote to André Verdet from Picasso and dat. On Flyleaf. 03.10.1964 auf Vorsatz blatt gewidmet von Picasso an André Verdet und dat. 03.10.1964. and to devote from André Verdet on second Flyleaf. Paris: au vent d'Arles, 1963. Folio. (No image provided.)

SCULPTURE

80. **EDWARD BERGE** (American, 1876-1924). *On the Trail*. Bronze. 81.28 x 60.96 cm (32" x 24"). Inscribed and signed: Roman Bronze Works. *L14.1329. Stolen from a storage facility in Rock Hall, MD on June 1, 2014.



80

STOLEN ART (cont.)

The following two bronze works were stolen from a gallery in Miami, FL on January 26, 2015. *L15.148:

81. MANUEL DE LA FUENTE (Spanish, born 1945). *La Criba*, 1985. See color photo on inside back cover.

82. AGUSTÍN CÁRDENAS (1927-2001). *Le Couple*, 1956. 148.59 x 68.58 x 55.88 cm (approx. 58 ½" x 27" x 22"). Ed. no. 2/8. Signed and numbered on the bottom.



82

The following four works by TIM ELLIS (English, born 1981) were stolen from a gallery in London, England on October 25, 2014. *L14.1151.

83. *Forever Hopeful*, 2014. Plaster, oak, acrylic, varnish, and woodstain. 68.99 x 11 x 11 cm (approx. 27 ¼" x 4 ¼" x 4 ¼").

84. *Resonator*, 2014. Ceramic, plaster, oak, pine, acrylic, varnish, and woodstain. 38.99 x 38.99 x 11 cm (15 ¼" x 15 ¼" x 4 ¼").

85. *The Source*, 2014. Oak, ceramic, perspex, acrylic. 65 x 23.01 x 23.01 cm (approx. 25 ½" x 9" x 9").

86. *Subdivider*, 2014. Oak, mahogany, acrylic, varnish, and woodstain. 38.99 x 38.99 x 11 cm (approx. 15 ¼" x 15 ¼" x 4 ¼").



83



84



85



86

CERAMICS, PORCELAIN, POTTERY

87. FERNAND LÉGER (French, 1881-1955).
Woman. See color photo on inside back cover.

The following two porcelain works were
stolen from an art fair in New York in
October 23, 2014. *L15.136:

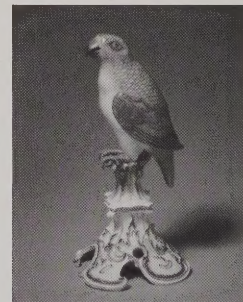
88. CHELSEA PORCELAIN (English, Red
Anchor Period, 1752-1756). *Zoomorphic
Tureen in the shape of "Billing Doves,"*
ca. 1754-55. 20.32 x 30.48 x 15.24 cm
(8" x 12" x 6").

88



89. HÖCHST (German, 1746-1796). *Parrot*,
1753. Porcelain. 30.48 x 15.24 x 7.62 cm
(12" x 6 x 3").

89



GLASS

90. TIFFANY AND COMPANY (American,
1837-). *American Art Nouveau molded and
leaded glass window*, 1920. 104.14 x 88.9 cm
(41" x 35"). *L14.1255. Stolen in transit in
Greenwich, CT on November 18, 2014.

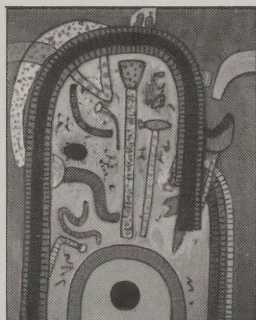
90



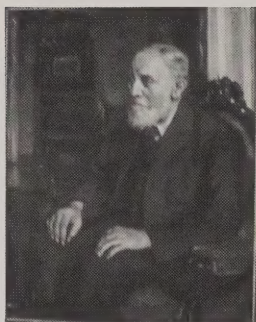
MISSING ART*

PAINTINGS

1. JAMES ALAN DAVIE (Scottish, 1920-2014). *Bilie's Game No. 1*, 1962/63. Oil on canvas. 213.36 x 172.72 cm (84" x 68"). *L14.1028. Missing in transit in New York City on May 17, 2000.



2. PAOLO SCHEGGI (Italian, 1940-1971). *Intersuperficie curva dal rosso + giallo*, 1965. 80.0 x 80.01 cm (31 1/2" x 31 1/2"). Acrylic on three overlapping canvases. On the verso are the labels of Galleria d'arte Niccoli, Parma and the label of Studio Gariboldi, Milan. *L14.1310. Missing in transit between Madrid, Spain and London, England on October 10, 2014.



3. KURT SCHWITTERS (German, 1887-1948). *Mr. E. Fischer*, ca. 1930. Oil on board. 106.68 x 83.82 cm (approx. 42" x 33"). Signed. *L14.1284. Missing in London, England on May 10, 2014.

4. JUSTUS VERWER (Dutch, 1625-1689). *Vieuw on Pont Rammekens New Middelburg*, 1660. Oil on panel. 28.02 x 48.11 cm (approx. 11" x 19"). Monogrammed in the flag: JDV. *L14.1229. Missing from the TEFAF Art Fair, Maastrich, The Netherlands on October 20, 2014.

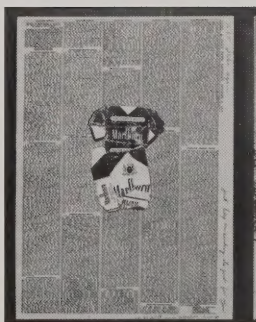
1

3

MIXED MEDIA

The following 6 works were missing from a New York gallery on July 5, 2007. *L15.34:

5. ANDY WARHOL (American, 1928-1987). *Art Strikes Again*, 1970. 45.72 x 30.48 cm (18" x 12"). Newspaper, cigarette pack, and ink.



5

*Numbering for the year 2015 Cumulative Index of Missing Art begins with this issue.

STOLEN ART ALERT®

6. **ANDY WARHOL** (American, 1928-1987). *Kent's Got It All Together*, 1970. Newspaper, cigarette pack, and ink. 45.72 x 30.48 cm (18" x 12"). Signed.

The works below, torn from a spiral pad of heavy white paper, were among 21 works created in a collaboration by **PETER BEARD** (American, born 1938) and **ANDY WARHOL** called "Introduction to the Things of Life":

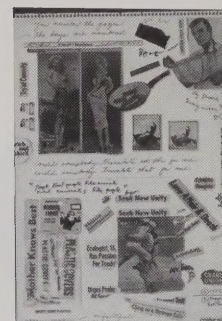


7

7. *I Love Campbell's Soups, Why Don't They Love Me?*, 1970. Paper, newspaper clippings, collage, and ink. 45.72 x 30.48 cm (18" x 12"). Signed.

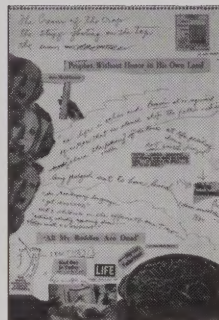
8. *You Number the Pages — The Days Are Numbered*, 1970. Paper, newspaper clippings, found objects, collage, and ink. 45.72 x 30.48 cm (18" x 12").

8



9. *The Cream of the Crop — The Stuff Floating on the Top — The Scum*, 1970. Paper, newspaper clippings, collage, and ink. 45.72 x 30.48 cm (18" x 12"). Signed.

9



10

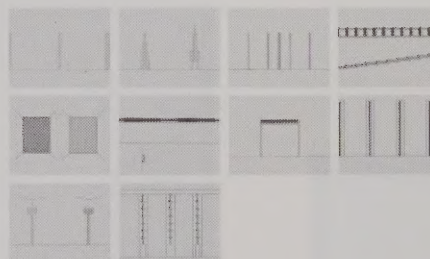


10. *Fast As a Flying Bird*, 1970. Paper, coloring book clippings, and ink, 1970. 45.72 x 30.48 cm (18" x 12").

PRINTS, ETCHINGS, LITHOGRAPHS

11. **DAN FLAVIN** (American, 1933-1996). *Projects 1963-95*, 1997. Portfolio of 10 aquatints, each measuring 52 x 66 cm (approx. 20 1/2" x 26"). Ed. no. 10/36. *L14.1082. Missing from storage in Frankfurt, Germany on May 16, 2014.

11



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PHOTOGRAPHS



12A. and 12B.



The following 6 photos were missing from storage in Frankfurt, Germany on May 16, 2014. *L14.1082:

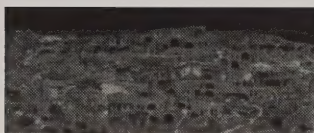
12. **ÓLAFUR ELIASSON** (Icelandic, born 1967). *Jökulsgilskvisl*, 2002. Color photograph on Forex. The work is in two parts, each measuring 40.01 x 59.99 cm (approx. 15 ¾" x 23 1.2"). Ed. no. 13/45.



13

13. **REINHARD MUCHA** (German, born 1950). *BBK SL KNY Edition*, ca. 1990-99. The intact work was comprised of 6 exhibition posters in artist frames. In the photo shown, the 4 missing works appear at top right and bottom left, center, and right. Each work measures 115 x 88.5 cm (approx. 45 ¼" x 34 ¾"). Signed. Ed. no. 7/12.

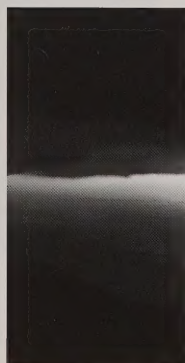
PETER SCHLÖR (German, born 1964):



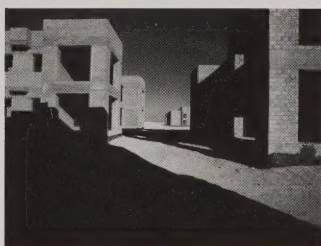
14



14. *Cavusin*, 2007. Fine art pigment print/ Diasec. The work is comprised of 2 photographic prints, each measuring 59.99 x 145.01 cm (approx. 23 ½" x 57"). Ed. no. 4/6.



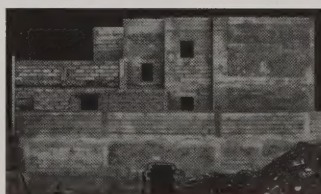
15



16

15. *Fuencaliente*, 2007. Fine art pigment print/ Diasec. 159.99 x 80.01 cm (approx. 63" x 31 ½"). Ed. no. 4/6.

16. *Sinai — IV*, ca. 2001-1. Fine art pigment print/ Diasec. 70 x 92.99 cm (approx. 27 ½" x 36 ½"). Ed. no. 1/6.



17

17. *Taos*, 2007. Fine art pigment print/ Diasec. 70 x 100 cm (approx. 27 ½" x 39 ½"). Ed. no. 3/6.

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The following 7 photographs were missing from an auction house in Cologne, Germany on July 7, 2014.

*L14.1286:

18. BERNARD HEINRICH WILHELM

BERSSENBRUGGE (Dutch, 1873-1959). *Rotterdam*, 1915. Bromoil print on a backing card. 21.69 x 28.6 cm (approx. 8 ½" x 11 ¼"). Signed l/r.



18

19. PETER HENRY EMERSON (English, 1856-1936). *Marshman Going to Cut Schoof-Stuff* (from "Life and Landscape on the Norfolk Broad"), 1886.

Platinum print on cardboard. 20.29 x 28.8 cm (approx. 8" x 11 ¼").

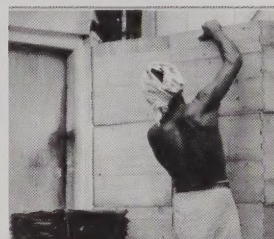


19

20. EMIL OTTO HOPPÉ (German/English, 1878-1972).

A Worker Packs Sheets of Rubber into Crates in Colombo, Sri Lanka, 1929. Gelatin silverprint.

12.09 x 16.41 cm (approx., 4 ¾" x 6 ½"). Signed and dated in black ink on the verso.



20

21. EMIL OTTO HOPPÉ (German/English, 1878-1972).

A Bunch of Cloves, 1929. Gelatin silverprint.

12.09 x 16.41 cm (approx. 4 ¾" x 6 ½"). Signed and dated in black ink on the verso.



21

22. ALFRED STIEGLITZ (American, 1864-1946).

Mauretania, 1911. Photogravure. 30.2 x 20.9 cm (approx. 11 ¾" x 8 ¼"). Information about the print (in pencil) appears on the verso.



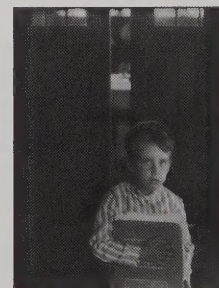
22

23. CLARENCE H. WHITE (American, 1871-1925). *Boy with Camera Work*, 1905. Photogravure.

30.51 x 21.01 cm (approx. 12" x 8 ¼"). Inscribed:

From: Camera Work 9, 1905. Provenienze:

Sammlung Hand van den Bogaars.



23

24. PAUL WOLFF (German, 1887-1951). *Untitled*, 1929.

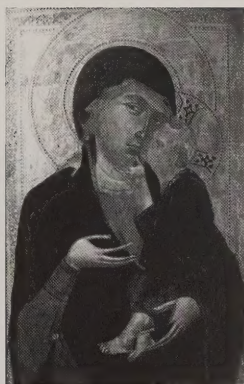
Gelatin silverprint. 15.9 x 24 cm (approx. 6 ¼" x 9 ½"). The photographer's studio and agency along with the stamp and negative number and other notes appear in pencil on the verso.



24

RECOVERED ART*

PAINTINGS



2

1



1. THOMAS FRANCIS DICKSEE (English, 1819-1895). *Portrait of a Young Woman Called Charmian*. Oil on canvas. 53.34 x 45.72 cm (21" x 18"). *L00.1038. R1708. Stolen from a private residence in London in March 2000. Recovered with the help of the ALR in the UK in November 2014.

2. DUCCIO DI BUONINSEGNA ? (Italian, active 1285-1290). *Madonna and Child*. Oil on panel. 70 x 46 cm (approx. 27 1/2" x 18"). *N91.355. Stolen in 1986 from a bank vault in Geneva, Switzerland. Recovered in New York in May 2015 with the help of Art Recovery International after it was spotted in a Sotheby's January 2014 sales catalogue, where it was listed as "Florentine painter, active in the ambit of Cimabue, circa 1285-1290."



3

3. CARL HILGERS (German, 1818-1890). *Old Watermill in the Mountains*, 1847. Oil on canvas. 63 x 79 cm. Signed and dated l/r. *L10.108963. R1346. Stolen from a private residence in Duisburg, Germany in 2010. Recovered with the help of the ALR in Germany in May 2011.



4

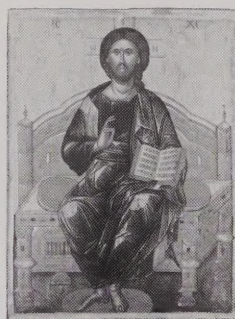
4. PABLO PICASSO (Spanish, 1881-1973). *La Coiffeuse*, 1911. Oil on canvas. 32.99 x 46 cm (approx. 13" x 18 1/4"). *L06.388. Stolen from the Centre Georges Pompidou, Paris between 1998 and 2001. Recovered by Homeland Security Investigations with the cooperation of Federal Customs and Border Protection officials while in transit between Belgium and Long Island City, New York on December 18, 2014.

*Numbering for the year 2015 Cumulative Index of Recovered Art begins with this issue.

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ICONS

5. **Unknown Artist. *Christ*** (Cypriot, 16th century). Icon. Looted from the Christ Antifonitis church in Kalograia, Cyprus after the Turkish invasion in 1974. Located by church officials at an auction house in Zurich, Switzerland in September 2014.

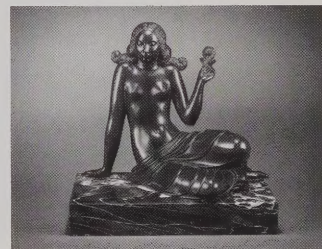


5

SCULPTURE

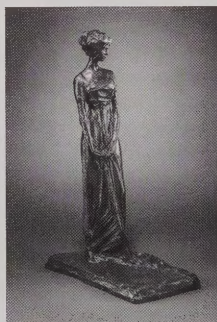
The following two bronze sculptures were stolen from Hirschl & Adler Galleries in New York in 1983 and recovered with the help of Art Recovery International in February 2015 after the works were consigned to another New York gallery:

6. **PAUL MANSHIP** (American, 1885-1966). *Central Figure of Day (part of the Day and the Hours sundial)*, 1916. Bronze with a marble base. Ht: 24.69 cm (approx. 9 ¾"). Signed and dated at back: C. PAUL MANSHIP 1916/RB-W. Roman Bronze Works. *N84.21.



6

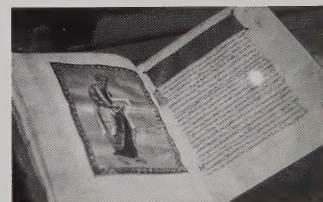
7. **PRINCE PAUL TROUBETZKOY** (Russian, 1866-1938). *Figure of Mrs. Gertrude Vanderbilt Whitney*, 1910. Bronze with a dark brown patina. Ht: 54 cm (approx. 21 ¼"). Signed and dated on the base: 1910/Paul Troubetskoy. Founder's stamp on base: CIRE/A. VALSUANI/PERDUE. *N83.519.



7

MANUSCRIPTS

8. **Unknown Artist** (Greek, 9th century). *Menologion*, c. 1050. Manuscript of more than 500 parchment pages of handwritten biographies of Greek Orthodox saints from the month of September. Stolen from the Dionysiou monastery on Mount Athos in the 1960s. Recovered in 2014 after Greek officials alerted Duke University in Durham, NC that it had purchased a stolen manuscript.



8

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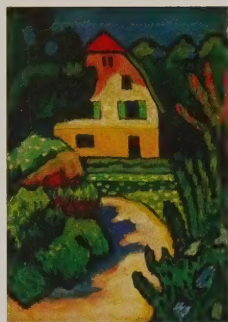
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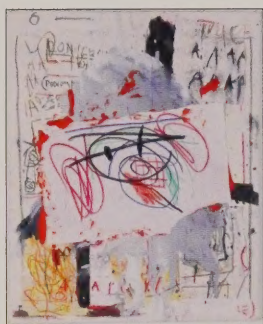
48



4



56



62



81



87



STOLEN ART

ASIAN ART

4. **Chimera** (Chinese, 18th century). Bronze, enamel, gold. Shaped like a horse. *L15.194. One of 20 items by unknown artists – assembled in 1863 by Empress Eugenie for her Chinese Museum at the Château de Fontainebleau – that were snatched from smashed display cases at the museum in an early morning burglary on March 1, 2015. See also item nos. 1-3; 5-20.

PAINTINGS

48. **GABRIELE MÜNTER** (German, 1877-1962). **The House**, 1909. Oil on canvas. 68.99 x 48.01 cm (approx. 27 1/4" x 19"). *L15.117. Stolen from a business in Nordrheinwestfalen, Gemany on January 16, 2015. See also item nos. 49, 55; 65-70; 72-74.

56. **JEAN-MICHEL BASQUIAT** (American, 1960-1988). **Untitled**, 1981. Mixed media on canvas. 49.99 x 41 cm (approx. 19 3/4" x 16 1/4"). Signed. *L14.1140. Stolen from an art warehouse in New York, NY on January 1, 1987. See also item no. 57.

62. **NATALIA GONCHAROVA** (Russian, 1881-1962). **Spanish Fantasy**, 1916-1920. Watercolor and gouache on paper on cardboard. 61.49 x 43 cm (approx. 24 1/4" x 17"). Signed. *L14.731. Stolen from storage in Moscow, Russia on February 6, 2009.

SCULPTURE

81. **MANUEL DE LA FUENTE** (Spanish, born 1945). **La Criba**, 1985. Bronze. 178.99 x 105 x 153.01 cm (approx. 70 1/2" x 41 1/4" x 60 1/4"). Ed. no. 1/6. Signed. *L15.148. Stolen from a gallery in Miami, FL on January 26, 2015. See also item no. 82.

CERAMICS, PORCELAIN, POTTERY

87. **FERNAND LÉGER** (French, 1881-1955). **Woman**. Ceramic. 45.01 x 30.99 cm (approx. 17 3/4" x 12" x 1 1/4"). Signed with initials l/r. Ed. no. 1/20. *L14.939. Stolen in Zurich, Switzerland on June 3, 2013.

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